Supreme Court, U.S.
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92-439

No.

IN THE
Supreme Court of the United States
October Term, 1992

In the Matter of PAUL A. WEISS,
a Disbarred Attorney,

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Respondent,

-against-

PAUL A. WEISS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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QUESTIONS PRESENTED

I. Was the punishment imposed by the Supreme Court of the State of New York Appellate Division, Second Department, unreasonable and unjust, thereby requiring reversal on the grounds of procedural due process?

II. Was the set punishment violative of Petitioner's equal protection rights in that the Appellate Division, Second Department failed to consider the presence of mitigating circumstances, which failure is present in almost all Second Department cases where attorneys have converted client trust funds?

PARTIES:

Petitioner/Respondent (below)

Grievance Committee for Tenth Judicial District
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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, PAUL A. WEISS, respectfully prays that a Petition for a Writ of Certiorari issue to review the decision and Order of the Supreme Court of the State of New York, Appellate Division, Second Department and of the Court of Appeals of New York.

OPINIONS BELOW

The opinion of the Court of Appeals of New York is set forth at pages 64a to 66a of the appendix to this Petition. The decisions and Orders of the Appellate Division,

Second Department disbarring Petitioner and striking his name from the rolls of New York's Attorneys and Counselors at Law, and denying reargument thereon are reproduced at pages 47a to 63a of the appendix. The Order denying reargument issued by the Appellate Division, and the Order denying Petitioner leave to appeal to the Court of Appeals of New York contained no opinion in connection with said Decisions. All Orders discussed he' ı were issued without oral argument.

JURISDICTION

The Decision and Order of the Court of Appeals denying leave to appeal thereto, was entered on June 11, 1992, the present Petition was filed within 90 days of June 11, 1992, this Petition is timely in accordance with the rules of this Court. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions involved in this Petition are Sections of the Fourteenth Amendment to the United States Constitution. The pertinent text of these provisions are reproduced in the appendix at pages to .

STATEMENT OF THE CASE

In its Decision and Order dated June 11, 1992, the Court of Appeals of New York, denied Petitioner leave to appeal the prior Decision and Order of disbarment of the Supreme Court of the State of New York, dated November 25, 1991.

PROCEDURAL HISTORY

1. On June 28, 1985, Petitioner invaded an account held in trust for his client, WILLIAM MAIRS, JR. by borrowing the sum of $3,050.00. Said invasion, by testimony of Petitioner was conducted with the knowledge and consent of the said client. Furthermore, it is uncontroverted that the funds were repaid to the attorney trust account within a period of only four (4) days.

2. The proceeding below was commenced through service of a Notice of Petition dated May 11, 1990. Said Petition set forth four charges, to wit:

CHARGE 1: Petitioner converted escrow monies belongs to his client, WILLIAM MAIRS, JR.;

CHARGE 2: Petitioner neglected his duties and obligations as the attorney for WILLIAM MAIRS, JR. and engaged in conduct involving fraud, deceit and; misrepresentation;

CHARGE 3: Petitioner failed to maintain escrow monies in an escrow account and had converted escrow funds belonging to his client EDWARD A. SEMIDEI;

CHARGE 4: Petitioner failed to maintain a proper escrow account and had engaged in conduct adversely reflecting on his fitness to practice law.

a copy of said Petition is reproduced on pages 1a to 9a of the appendix.

2. Petitioner filed an Answer to the Petition on July 3, 1990. By Order dated December 13, 1990, the issues raised by the Petition and Answer were referred to the

Honorable Moses Weinstein to hear and report his findings upon each of the issues. That said Referee found that the charges enumerated within said Notice of Petition were proven. However, said Referee also directed the Court's attention to the Petitioner's statement that the situation was an aberration. A copy of the said Referee's Report is reproduced at pages 12a to 28a of the appendix.

3. On or about July 26, 1991, Petitioner moved the Second Department for an Order confirming the Referee's Report and for the imposition of punishment. On or about August 16, 1991, Petitioner cross-moved to confirm only charges One and Three and to disaffirm the report to the extent that it sustained charges Two and four and for the imposition of a public censure.

4. In an Order dated November 25, 1991, the Second Department confirmed the Referee's Report to the extent that it sustained charges One and Three and dismissed Charges Two and Four. The Court also denied that branch of the cross-motion which applied for the imposition of a public censure and disbarred Petitioner. A copy of said Order is reproduced at pages 53a in 63a the appendix.

5. Petitioner made application for reargument to the Second Department based on the grounds recited above. That said application was denied in an Order dated March 31, 1992. Said Order contained no opinion. Said Order denying reargument is reproduced at pages 51a-52a in the appendix.

6. Petitioner filed his Notice of Appeal and Jurisdictional Statement with this Court on January 6, 1992. That said Notice was dismissed in an Order of this Court, dated April 3, 1992, on the grounds that no substantial constitutional issue exists. A copy of said Order is reproduced at pages 64a in the appendix.

7. In May of 1992, the Petitioner moved the Court of Appeals of New York for an Order granting leave to appeal to said Court. In an Order entered, June 11, the Court denied leave. A copy of said order is reproduced at page 65a of the appendix. Said Order contained no opinion.

REASONS FOR GRANTING THE PETITION

I. THE COURT'S IMPOSITION OF PUNISHMENT WAS ARBITRARY, UNREASONABLE AND UNJUST AND REQUIRES REVERSAL AND MODIFICATION ON GROUNDS OF PROCEDURAL DUE PROCESS.

A. THE COURT FAILED TO CONSIDER MITIGATING CIRCUMSTANCES IN ITS DECISION AND ORDER OF DISBARMENT.

In its Decision and Order dated November 25, 1991, the Court set forth the grounds for disbarment. Notwithstanding the testimony and evidence proffered by Petitioner during the evidentiary hearing, and notwithstanding the findings of fact in the Referee's Report regarding mitigating circumstances, no mention was made or even acknowledged thereof.

In *Re Reifschneider*, 60 A.D. 478, 69 N.Y.S. 1069, the Court held that considering the harsh effects of disbarment, it should not be ordered where any less severe action such as censure or suspension, would accomplish the desired end. Moreover, unless an attorney is convicted of a Felony as defined by the Judiciary Law, in which case disbarment is automatic, the Appellate Division has the discretion to order censure, suspension or disbarment of an attorney found guilty of professional misconduct.

The type of disciplinary action to be taken against an attorney may be affected in part, and not infrequently, by circumstances which will result in more lenient treatment, including but not limited to:

a) good reputation as an attorney, *Re Dagler*, 48 A.D.2d 512, 370 N.Y.S.2d 679 (Second Department);

b) good record as a member of the bar, *Re Dagler*, (Supra);

c) strain of family or marital problems, *Re Stevenson*, 39 A.D.2d 334 N.Y.S.2d 331 (Second Department);

d) attorney illness, *Re Schleimer*, 69 A.D.2d 142, 418 N.Y.S.2d 787 (Second Department);

e) lack of damage resulting to client, and refund of any funds converted, in *Re Glick*, 66 A.D.2d 487, 412 N.Y.S.2d 753; (Second Department);

f) cooperation and candor with Grievance Committee, *Re Sandalls*, 69 A.D.2d 240, 421 N.Y.S.2d. 890.;

g) lack of venality and an absence of proof of veniality, *Re Brill*, 64 A.D.2d 170, 409 N.Y.S.2d 226.

Moreover, in cases where it is found that attorney misconduct consisted of conversion, misappropriation or mismanagement of escrow funds, the presence of mitigating circumstances in cases heard in all four Judicial Departments have resulted in punishment consisting of suspension rather than disbarment. A brief review of some of these cases is set forth below.

In two (2) Second Department cases, namely in *Re Donaldson*, 34 A.D.2d 381, 311 N.Y.S.2d 763 and in *Re*

Glick, 66 A.D.2d 487, 413 N.Y.S.2d 753, attorneys who converted client funds were not disbarred due to the presence of mitigating circumstances. In *Glick*, the attorney repaid the misappropriated funds, which repayment was cited by this Court as reason for its suspension. In *Donaldson*, the Court cited financial difficulties, candor, full cooperation with the Grievance Committee, as well as full restituiton as mitigating circumstances which warranted suspension rather than dismissal.

In the instant case, Petitioner set forth mitigating circumstances which fall under the classifications drawn above, which circumstances were set forth in the Referee's Findings of Fact. Nonetheless, said circumstances were not even acknowledged in the Court's Decision and Order.

Furthermore, other Judicial Departments have partially excused conversion, misappropriation and mismanagement of escrow funds when mitigating circumstances exist. In *Re Levine*, 65 A.D.2d 326, 411 N.Y.S.2d 618 (painful and serious health problems, good reputation -- *but failure to make full restitution*); in *Re Beck*, 49 A.D.2d 785, 372 N.Y.S.2s 271 (full restitution, marital problems, family illness, good reputation); in *Re Baylyl*, 49 A.D.2d 785, 372 N.Y.S.2d 273 (family illness, full restitution, no prejudice to client); in *Re Benzinger*, 66 AD.2d 426, 414 N.Y.S.2d 403 (full restitution, full cooperation with Grievance Committee).

In short, the Court should have at least acknowledged the presence of mitigating circumstances in the instant case. Its failure to do so leads to a compelling presumption that such factors were not even considered by the Court, which failure is unjust, unfair and legally incorrect. Therefore, the absence of any discussion regarding mitigating circumstances in the Court's Decision and

Order requires modification of the imposition of punishment and the imposition of a more moderate and just sanction.

B. THE COURT'S FAILURE TO PUBLISH THE ORDER OF REFERENCE AFTER THE EVIDENTIARY HEARING AND ITS FAILURE TO SUSPEND PETITIONER DURING THE PENDENCY OF THE PROCEEDING IS INCONSISTENT WITH ITS DECISION TO IMPOSE THE PUNISHMENT OF DISBARMENT.

A. Disciplinary proceeding being primarily an inquiry into the fitness of the attorney to continue to practice in his procession, the attorney should be disbarred only if found unfit. Otherwise, censure or suspension is warranted. *Application of the Bar Association of Nassau County*, 163 N.Y.S.2d 752 (Second Department). Moreover, the Court of Appeals has held that the Appellate Division of an immediately suspend attorneys when serious misconduct is admitted or uncontroverted and the public interest is threatened. *Matter of Padilla*, 67 N.Y.2d 440. In the instant action, the Court, in its Decision and Order adjudged the Petitioner unfit to continue in the practice of law. However, its prior conduct during the pendency of the proceeding is inconsistent with this finding, and renders the same arbitrary and unreasonable.

First, the court specifically directed that its Order of Reference not be published. This is rare, especially in instances where a Court has reason to believe that disbarment may be warranted and that the public should receive notice of the developments in disciplinary proceedings against a particular attorney.

Second, the Court did not suspend Petitioner during the pendency of the disbarment proceedings. This, too, is rare, as a Court will routinely do so in order to protect the public, especially in instances where disbarment may be warranted.

The purpose of due process of law is to secure individuals from the arbitrary exercise of powers of government, unrestrained by established principles of private rights and distributive justice. *Milchman v. Rivers*, 39 Misc.2d 347, 240 N.Y.S.2d 859, dismissed, 13 N.Y.2d 1123, 247 N.Y.S.2d 122. Moreover, the essence of due process is fundamental fairness. *People v. Brown*, 125 Misc.2d. 479 N.Y.S.2d 113.

The seemingly arbitrary and unreasonable decision, then to disbar Petitioner is patently inconsistent with the Court's prior action and requires reversal and/or modification accordingly.

II. THE SECOND DEPARTMENT, AS A MATTER OF COURSE, GENERALLY DISBARS ATTORNEYS WHO ARE FOUND TO HAVE CONVERTED CLIENT TRUST FUNDS NOTWITHSTANDING THE PRESENCE OF MITIGATING CIRCUMSTANCES, WHICH CONDUCT PRECIPITATES AN UNEQUAL APPLICATION OF THE LAW AND VIOLATES PETITIONER'S RIGHT TO EQUAL PROTECTION OF THE LAW.

The Order of Disbarment, in light of the attendant circumstances and existent case law, precipitates a violation of Petitioner's equal protection rights under Federal and State Constitutions. In short, the Appellate Division, Second Department, is unduly harsh in imposing sanctions on attorneys who convert escrow funds, as compared with other Judicial Departments.

Under Article 14, Section I of the U.S. Constitution, and Article 1, Section II of the New York State Constitution, no State shall deny to any person within its Jurisdiction the equal protection of laws. A violation of equal protection is deemed to occur when a State agency treats persons similarly situated, differently under the law. *Arnold v. Constantine*, 164 A.D.2d 203, 563 N.Y.S.2d 259. As set forth below, the Second Department, in recent years, has generally disbarred attorneys who are found to have converted client funds, notwithstanding the existence of mitigating circumstances. On the other hand, the other Departments, in recent years, have frequently imposed sanctions less harsh than disbarment when mitigating circumstances are present. Thus, attorneys in the Second Department who are subject to Disciplinary Proceedings are being treated more harshly, and differently than similarly situated attorneys who are disciplined by the other Departments. Therefore, Petitioner being disbarred by the Second Department, notwithstanding the existence of mitigating circumstances, has been denied the equal protection of the law.

As a matter of course, the Second Department routinely disbars attorneys who are found to have converted escrow funds. In *Re DiPerno*, 169 A.D.2d 124, 573 N.Y.S.2d 880; in *Re Grosselfinger*, 165 A.D.2d 412, 568 N.Y.S.2d 458; in *Re Batkin*, 151 A.D.2d 1, 547 N.Y.S.2d 234; in *Re Sykes*, 150 A.D.2d 126, 546 N.Y.S.2d 376; in *Re Green*, 87 A.D.2d 338, 451 N.Y.S.2d 785; in *Re Rolnick*, 171 A.D.2d 29, 574 N.Y.S.2d 369; in *Re D'Alva*, 168 A.D.2d 71, 571 N.Y.S.2d 47; in *Re Johnson*, 168 A.D.2d 7, 570 N.Y.S.2d 599; in *Re Lopez*, 152 A.D.2d 148, 548 N.Y.S.2d 52; in *Re Wiacek*, 150 A.D.2d 4, 544 N.Y.S.2d 870; in *Re Mirto*, 126 A.D.2d 362, 513 N.Y.S.2d 740; in *Re Bambury*, 169 A.D.2d 168, 571 N.Y.S.2d 480.

Moreover, the Second Department will disbar, notwithstanding the presence of mitigating circumstances. In *Re Dean*, 147 A.D.2d 133, 541 N.Y.S.2d 555; in *Re Schwartz*, 131 A.D.2d 276, 521 N.Y.S.2d 256; in *Re Raikin*, 134 A.D.2d 131, 523 N.Y.S.2d 895; in *Re Van Cook*, 171 A.D.2d 588, 574 N.Y.S.2d 375.

The First Department. on the other hand, has often times permitted mitigating circumstances to lessen the punishment imposed, to wit: in *Re Anderson*, 168 A.D.2d 59, N.Y.S.2d 528; in *Re Fishbein*, 167 A.D.2d 85, 570 N.Y.S.2d 800; in *Re Greenberg*, 165 A.D.2d 424, 568 N.Y.S.2d 79; in *Re Bodner*, 160 A.D.2d 75, 559 N.Y.S.2d 6; in *Re Altomerianos*, 160 A.D.2d 96, 559 N.Y.S.2d 712; in *Re Weisberg*, 149 A.D.2d 58, 544 N.Y.S.2d N.Y.S. 145.

Moreover, the Fourth Department has also imposed lesser punishments due to mitigating circumstances, to wit: in *Re Ferullo*, 152, A.D.2d 45, 547 N.Y.S.2d 795.

There is only Decision rendered by the Second Department in the last three (3) years where an attorney who converted escrow funds was censured, rather than disbarred, to wit: in *Re Goodman*, 146 A.D.2d 78, 539 N.Y.S.2d 461. In said case, the Court only imposed a censure due to the followig circumstances, to wit:

a) medical problems;

b) no loss resulted from conversion;

c) evidence of good character and professional reputation;

d) full cooperation through Disciplinary Proceeding; and

e) previously unblemished record.

The transcript of the evidentiary hearings and the Referee's Findings of Fact bear witness to the fact that uncontroverted evidence regarding the existence of circumstances "a" through "e" was introduced by Petitioner during the proceedings in the Court below. This, the significant differences in punishment imposed in *Goodman* and in the instant matter, despite the factual similarities between the cases, creates another violation of Respondent-Apellant's equal protection rights in that he is being treated differently and more harshly than other attorneys, particularly within the Second Department.

The essence of equal protection is that all persons similarly situated should be treated alike. *Pratt v. Tofany*, 66 Misc.2d 172, 320 N.Y.S.2d 556, rev'd 37 A.D.2d 854, 326 N.Y.S.2d 257. Moreover, although a law license has been construed as a property right (supra), the constitutional guarantees of equal protection extend to privileges as well as rights. *Pratt v. Tofany*, (supra), *Uberman v. Lasler*, 55 Misc.2d 1027, 287 N.Y.S.2d 464.

In short, Petitioner, as a Second Department attorney subject to disciplinary sanctions, is being treated differently and more harshly than similarly situated attorneys in other Judicial Departments. Moreover, the current bench has treated him differently than other attorneys who have been sanctioned by a Second Department Tribunal. Such an arbitrary, unequal and unfair application of the law not only constitutes an abuse of discretion, but is violative of Respondent-Appellant's equal protection rights under Federal and State Constitutions. Such a violation demands modification and/or reversal of the Court's previous Decision and Order of Disbarment.

Finally, the unequal and inconsistent application of the law by the four (4) Departments requires that a higher court intervene and establish guidelines for attorney Disciplinary Proceedings. Said intervention must specifically dictate the weight that mitigating circumstances should carry in such proceedings, if present, in order to avoid the kind of arbitrary and inconsistent results obtained herein.

ARGUMENT

III. THE PROCEDURES EMPLOYED BELOW, VIOLATE ESSENTIAL MOTIONS OF PROCEDURAL DUE PROCESS AND REQUIRE THAT THE ORDER OF DISBARMENT BE MODIFIED.

A. A LAW LICENSE IS A PROPERTY RIGHT, WHICH RIGHT ENTITLES THE HOLDER THEREOF TO RECEIVE PROPER NOTICE AND HEARING BEFORE SAID PROPERTY IS SEIZED.

In the landmark Decision of *O'Brien v. O'Brien*, 66 N.Y.2d 576, the Court of Appeals held that a professional license is a property right. Notwithstanding the Appellate Division's contention that a law license is privilege, it logically follows that the holder of such a right is entitled to due process of law before such a right may be taken by judicial process.

In the instant case, Petitioner was the holder of a professional law license, which license ultimately was seized in the Disciplinary Proceeding below. For the reasons set forth below, the judicial proceeding which was conducted below violated the due process rights of the Respondent under Federal and State constitutions and requires reversal

by this Court and the imposition of a more appropriate sanction.

B. RESPONDENT-APPELLANT WAS DEPRIVED OF A PROPERTY RIGHT WITHOUT DUE PROCESS OF LAW, WHICH DUE PROCESS WAS REQUIRED UNDER FEDERAL AND STATE CONSTITUTIONS AND NEW YORK CASE LAW.

Due process of law extends to those situations where a citizen may be deprived of life, liberty or property whether the proceeding be judicial, administrative or executive. *Williams v. W.P. Housing Authority*, 62 Misc.2d 613, 309 N.Y.S.2d 454 aff'd 35 A.D.2d 965, 317 N.Y.S.2d 935. Moreover, due process is not merely limited to jurisdiction over subject matter and the person; it includes procedural due process, i.e. the ways of asserting and conducting disciplinary punishment or economic deprivation proceedings fairly and openly, with full legal rights and remedies to be used by the party under attack. *Blake v. North Shore Multiple Listing, Inc.*, 81 Misc. 793, 367 N.Y.S.2d 793.

The proceeding below to discipline Petitioner resulted in a deprivation of his property right, i.e., his law license. The procedures which were employed constitute a prima facie violation of Petitioner due process rights, to wit:

a) The Petitioner received no notice, whatsoever, either during the evidentiary hearing nor in Petitioner-Respondent's Motion to Confirm that prior acts which resulted in letters of private censure would be construed by the Court to be prior acts of professional misconduct, which acts played a decisive role in the Court's Decision to disbar Petitioner.

Thus, Petitioner was deprived of an opportunity to challenge, rebut, or even to investiage the alleged prior acts of misconduct before the Court made its determination. In sum, the grounds which were relied upon to deprive Respondent-Appellant of his property rights were never presented to him.

b) Petitioner's procedural due process rights were further violated by the Court's failure to hold a hearing with reference to Respondents Motion to Confirm. Petitioner was further deprived of an opportunity to rebut the aforesaid alleged prior acts of misconduct or to offer additional evidence in his behalf regarding the same.

Due process requires that a person be fully informed of the nature of the charges so as to permit the person to adequately prepare and present a defense. *Mutari v. Town of Stony Point*, 99 A.D.2d 885, 472 N.Y.S.2d 439. Further, where a persons' good name or reputation is at stake because of what the state of one of its agencies has done with respect to him, due process would afford him opportunity to refute the charge. *Cohen v. Department of Mental Hygiene*, 48 A.D.2d 697, 368 N.Y.S.2d 50. Finally, the right of confrontation, the right of cross-examination, and the right to present a defense are fundamental to fair procedure and hence constitute due process. *Matter of Andrea B*, 94 Misc. 2d 99, 405 N.Y.S.2d 977.

Most importantly, due process requires notice and opportunity to be heard before a determination may be made as to the suspension of an attorney for alleged misconduct. *Re Zuckerman*, 19 N.Y.2d 977, 281 N.Y.S.2d 523, 228 N.E.2d 693, on remand (2nd Department), 28 A.D.2d 907, 282 N.Y.S.2d 951 aff'd 20 N.Y.2d 430, 285 N.Y.S.2d 1, 231 N.E.2d 718, cert. den. 390 U.S. 925, 19 L.Ed.2d 985, 88 S.Ct. 856, reh. den. 390 U.S. 975, 19

L.Ed.2d 1196, 88 S. Ct. 1031 and motion den. 32 A.D.2d 785, 303 N.Y.S.2d 338.

Moreover, the requirements of procedural due process must be met before the State can exclude a person from practicing law. *Mitchell v. Association of the Bar*, 40 N.Y.2d 153, 386 N.Y.S.2d 95, 351 N.E.2d 743.

In short, the failure of the Court to apprise Petitioner of its proposed treatment of former acts which precipitated private letters of censure, which acts were treated by the Court in its Decision and Order as acts of professional misconduct, violated Respondent-Appellant's due process rights. Therefore, the punishment imposed by the Court requires reversal and/or modification.

C. THE FACT THAT DISCIPLINARY PROCEEDINGS ARE ADMINISTRATIVE IN NATURE DOES NOT EXCUSE THE ABSENCE OF PROCEDURAL DUE PROCESS.

The Supreme Court of the United States has held that disciplinary proceedings are quasi-administrative in nature. *Anmos v. Baker*, 360 U.S. 287, 79 S. Ct. 1157, 3 L.Ed.2d 1234. However, under New York law, due process protection are afforded to litigants in administrative proceedings as liberally as in any other proceeding.

The first fundamental of due process is notice of the charges made, which notice is a principle equally applicable to administrative proceedings, *Murray v. Murphy*, 24 N.Y.2d 150, 299 N.Y.S.2d 175, 247 N.E.2d 143. Moreover, procedural due process affords the opportunity to refute charges which impose stigma or other disability

and to regulate a person's freedom to pursue employment opportunities. *Ronayne v. Lombard*, 92 Misc.2d 538, 400 N.Y.S.2d 693. Finally, procedural due process means the way of aserting and conducting disciplinary punishment or economic deprivation, fairly and openly, with full opportunity for legal rights and remedies to be used by the party under attack. *Gould v. Looney*, 60 Misc.2d 973, 304 N.Y.S.2d 537, mod. 34 A.D.2d 807, 311 N.Y.S.2d 695.

Therefore, notwithstanding the quasi-administrative nature of the within proceeding, said proceeding still must ensure that Petitioner received due process of the law.

CONCLUSION

It is respectfully submitted that Petitioner's Petition for Certiori and the issues raised herein should be addressed by the Justices of this Court.

Respectfully submitted,

PAUL A. WEISS
Petitioner, Pro Se
P.O. Box 341
Kings Park, New York 11754
(516) 358-3879

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT,

Petitioner

-against-

PAUL A. WEISS,

Respondent.

NOTICE OF PETITION

S I R :

PLEASE TAKE NOTICE, that upon the annexed petition of the GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT, affirmed on the 11th day of May, 1990, and upon the order of this Court dated and entered May 8, 1987, authorizing and directing the undersigned, as attorney for the petitioner, to proceed with the prosecution of a disciplinary proceeding against the respondent herein, a motion will be made before this Court at the Courthouse, 45 Monroe Place, Borough of Brooklyn, County of Kings, State of New York, on the day of June, 1990, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order directing that the respondent, PAUL A. WEISS, be disciplined pursuant to the provisions of Section 90 of the Judiciary Law of the State of New York, and for such further action as the Court may deem just and proper.

Respondent shall serve a copy of his answer upon counsel to the petitioner and file two (2) copies with the Clerk of this Court, along with proof of service, on or before the return date along with proof of service, on or before the return date.

Dated: Westbury, New York
May 11, 1990

Yours, etc.,

FRANK A. FINNERTY, JR.
Chief Counsel
Attorney for Petitioner
Grievance Committee for the
Tenth Judicial District
900 Ellison Avenue
Suite 304
Westbury, New York 11590
(516)832-8585

GRACE D. MORAN, of Counsel

TO PAUL A. WEISS
Respondent
370 Old Country Road
Garden City, NY 11530

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT,

Petitioner,

-against-

PAUL A. WEISS,

Respondent.

PETITION

TO: THE HONORABLE GUY JAMES MANGANO, THE PRESIDING JUSTICE, AND ASSOCIATE JUSTICES OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK SECOND DEPARTMENT

The petition of the GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT, respectfully alleges:

FIRST: The petitioner has been authorized to institute the subject proceedings against the respondent, PAUL A. WEISS, by order of this Court dated and entered May 8, 1987.

SECOND: The respondent was admitted to practice as an attorney and counselor-at-law in the State of New York by the Appellate Division of the Supreme Court, Second Department, on June 18, 1958.

THIRD: Upon information and belief, at all times hereinafter mentioned, the respondent engaged in the practice of law in the State of New York, and maintained offices for said purpose in Nassau County, New York.

FOURTH: Upon information and belief the respondent has engaged in conduct prejudicial to the administration of justice, conduct that adversely reflects on his fitness to practice law, and other unethical and unprofessional conduct, in that:

CHARGE ONE

Respondent converted escrow monies belonging to his client, William N. Mairs, Jr., in the manner hereinafter specified:

1. In or about 1982, respondent was retained by William N. Mairs, Jr., a disbarred attorney to represent him in connection with Mairs' application for reinstatement in the First Judicial Department.

2. Mairs had been disbarred for conversion of funds belonging to the Estate of Jane Farrell.

3. In or about December 1983, Mairs opened an interest bearing escrow account so that restitution could be made to the heirs of the Farrell Estate.

4. The aforesaid account was opened at National Westminster Bank, New Hyde Park brance, acct. # 2-202-61130-5. Respondent was named as the escrowee.

5. Mairs made an initial deposit of $10,300 and in June 1985, made a second deposit of $9,200.

6. Under the terms of the escrow agreement no withdrawals were to be made until the persons entitled to restitution were identified and located.

7. In September 1985, Mairs learned that respondent had withdrawn $3,050 from this account on June 28, 1985 for respondent's own use and benefit.

8. The aforesaid withdrawal was made without the knowledge or consent of Mairs.

9. By engaging in the aforesaid conduct respondent violated DR 9-102 of the C.P.R.

CHARGE TWO

Respondent neglected his duties and obligations as the attorney for William N. Mairs, Jr. and engaged in conduct invovling fraud, deceit and misrepresentation in the manner hereinafter specified:

1. There were eight heirs to the Estate of Jane Farrell. Five lived in Ireland and three lived in the United States.

2. Prior to retaining respondent, Mairs had been in contact with Alphonsus Farrell who lived in Ireland and was acting as an intermediary on behalf of the other heirs in Ireland.

3. After retaining respondent, Mairs asked respondent to contact Alphonsus Farrell for the purpose of arranging restitution.

4. Respondent advised Mairs that he had written to Farrell and to the heirs in the United States on three occasions but had received no reply.

5. Respondent advised Mairs not to attempt to contact Farrell again.

6. Thereafter respondent argued in Mairs application for reinstatement that Mairs had done his best to fulfill his obligations but his efforts to resolve the matter were unsuccessful due to a lack of cooperation on the part of the heirs.

7. The aforementioned argument was unsuccessful.

8. Mairs thereafter learned that the letters which respondent claimed to have sent to the heirs were never received by them.

9. Mairs retained new counsel who wrote to the heirs and an immediate response was received from them accep-

ting the settlement proposals.

10. By engaging in the aforesaid conduct respondent violated Dr 1-102 (A)(5) and DR 7-101(A)(2).

CHARGE THREE

Respondent has failed to maintain escrow monies is an escrow account and has converted escrow funds belonging to his client Edward A. Semidei in the manner hereinafter specified:

1. Respondent represented Edward A. Semidei in an action for divorce.

2. On May 13, 1985, pursuant to an agreement in the aforesaid action, Elsie Semidei issued two certified checks in the amounts of $5,000.00 and $1,000.00. Each check was payable to Edward A. Semidei and Paul Weiss, Esq.

3. On May 16, 1985, respondent deposited both checks into account # 171-0641750 maintained at Manufacturers Hanover Trust Co. in the name of Paul A. Weiss, attorney-at-law.

4. On May 31, 1985, and continuing through June 20, 1985, the balance in the aforementioned account was less Edward Semidei's interest in it.

5. On June 7, 1985, respondent issued a check to Edward Semidei in the amount of $2,950.00 drawn on the aforementioned account.

6. The aforesaid check was returned for insufficient funds.

7. On or about June 28, 1985, Edward Semidei appeared at respondent's office and demanded payment.

8. On June 28, 1985, respondent went to National Westminster Bank where he maintained account # 2-020-61130-5 designated Paul Weiss Escrow and withdrew $2,950.00 in a cashier's check payable to Edward Semidei and $100.00 is cash which respondent kept.

9. The aforesaid withdrawal was made against funds

held in escrow for another client of respondent's, William N. Mairs, Jr.

10. By engaging in the aforementioned conduct respondent has violated DR 9-102(A)(B) and DR 1-102(4)(6) of the C.P.R.

CHARGE FOUR

Respondent has failed to maintain a proper escrow account and has engaged in conduct adversely reflecting on his fitness to practice law in the manner hereinafter specified:

1. On or about March 14, 1977, Blanche Zam, now Blanche Darling entered into a contract to purchase a house.

2. Ms. Zam (Darling) was represented by Myron Kanter, Esq. and the sellers, Kavros, by Bernard Fremont of Fremont & Weiss.

3. Ms. Zam (Darling) turned over $2,350.00 in escrow to Fremont as a downpayment.

4. No closing took place and litigation was commenced for the return of the escrow, Zam v. Kavros, Fremont & Weiss.

5. On or about January 30, 1981, respondent signed a stipulation concluding the aforementioned litigation. The stipulation provided that clear title was to be conveyed to Zam (Darling) on the property by March 30, 1981 or the downpayment was to be returned to her. If neither term was met Zam (Darling) had the right to enter judgment against all named defendants.

6. Judgment was entered against the defendants on April 13, 1981 for the sum of $3,027.25 (deposit plus interest and costs).

7. The law firm of Fremont and Weiss dissolved in or about 1981.

8. Attempts by Myron Kanter to collect the judgment

were unsuccessful.

9. In or about January 1983, respondent paid $1,100.00 to Kanter on the judgment.

10. Respondent acknowledged that no escrow funds remained in the Fremont and Weiss Account.

11. In April 1985, respondent had a telephone conversation with Blanche Zam (Darling) in which he promised to pay the balance remaining on the judgment in May 1985. Respondent has not done so.

12. By engaging in the aforesaid conduct respondent has violated DR 9-102(B)(4) and DR 1-102(A)(6) of the C.P.R.

FIFTH: The respondent, Paul A. Weiss, knew or should have known in committing the above described actes he was guilty of professional misconduct within the meaning of Section 691.2 of the Rules Governing the Conduct of Attorneys, Appellate Division, Second Department.

SIXTH: The sources of petitioner's knowledge and the grounds for its belief are the documents and information provided to petitioner.

SEVENTH: No previous application has been made for the relief requested herein.

WHEREFORE, petitioner prays that an order be entered directly that the respondent, PAUL A. WEISS, be disciplined upon the charges set forth herein, and for such other action as may be contemplated by Section 90 of the Judiciary Law of the State of New York, or as the Court may deem just and proper.

Dated: Westbury, New York
May 11, 1990

FRANK A. FINNERTY, JR., Chief Counsel
Attorney for Petitioner
Grievance Committee for the
Tenth Judicial District
Suite 304
(516)832-8585

GRACE D. MORAN, of Counsel

STATE OF NEW YORK

COUNTY OF NASSAU

FRANK A. FINNERTY, JR., an attorney and counselor-at-law, duly admitted to practice in the State of New York, under the penalties of perjury, affirms as follows:

That he is the Chief Counsel to the petitioner in the within proceeding.

That he has read the foregoing petition and knows the contents thereof.

That the same is true to his own knowledge, except as to the matters therein stated to be alleged or information and belief, and that as to those matters he believes it to be true.

Dated: Westbury, New York
May 11, 1990

FRANK A. FINNERTY, JR.
Chief Counsel
Grievance Committee for the
Tenth Judicial Districe.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.
LAWRENCE J. BRACKEN
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
CORNELIUS J. O'BRIEN, JJ.

90-01206

In the Matter of Paul A. Weiss,
an attorney and counselor at law.

Grievance Committee for the Tenth
Judicial District, petitioner;

Paul A. Weiss, respondent.

DECISION & ORDER

Proceeding pursuant to statute (Judiciary Law §90) to discipline the respondent, Paul A. Weiss, an attorney and counselor-at-law, who was admitted to practice by the Appellate Division of the Supreme Court, Second Judicial Department on June 18, 1958.

Upon the papers filed in support of the application and the answer thereto, it is

ORDERED that the issues raised by the petition and the respondent's answer are referred to Hon. Moses M. Weinstein, a retired Associate Justice of the Appellate Division, Second Judicial Department, c/o Weinstein and Weinstein, 123-35A 82nd Road, Kew Gardens, New York 11415, as Special Referee to hear and to report, together with his findings on the issues.

MANGANO, P.J., BRACKEN, LAWRENCE,KUNZEMAN and O'BRIEN, JJ., concur.

SUPREME COURT, STATE OF ENW YORK
APPELLATE DIVISION, SECOND DEPT.

ENTER:

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on December 13, 1990 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on December 13, 1990

Martin H. Brownstein
Clerk

December 13, 1990

MATTER OF WEISS, PAUL A.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Petitioner,

PAUL A. WEISS,

Respondent.

REPORT OF THE REFEREE TO THE HONORABLE PRESIDING JUSTICE AND JUSTICES OF THE APPELLATE DIVISION, SECOND DEPARTMENT, SUPREME COURT

June 13, 1991

MOSES M. WEINSTEIN
Referee
123-35A 82nd Road
Kew Gardens, New York 11415
(718)544-3344

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Petitioner,

PAUL A. WEISS,

Respondent.

REPORT OF
MOSES M. WEINSTEIN
SPECIAL REFEREE

TO THE JUSTICES OF THE SUPREME COURT,
APPELLATE DIVISION, SECOND DEPARTMENT

INTRODUCTION

By order of the Appellate Division, Second Department, dated May 8, 1987, this proceeding was instituted by the Grievance Committee for the Tenth Judicial District with respect to PAUL A. WEISS, an attorney and counselor at law, admitted to practice by this Court on June 18, 1958. The Petitioner prayed that the Respondent be disciplined for professional misconduct upon the charges therein set forth. The proceeding came before this Court by Notice of Petition dated May 11, 1990, and the Respondent filed an Answer to the Petition on July 3, 1990. By Order date December 13, 1990, the issues raised

by the Petition and Answer were referred to me, a retired Justice of the Supreme Court, Appellate Division, Second Department, to hear and report with my findings upon each of the issues.

Hearings were held by me on April 17, 1991, April 19, 1991 and May 7, 1991, and in due course, post hearing memoranda were submitted by Petitioner and Respondent.

The Petitioner was represented by Grace D. Moran, of the office of Frank A. Finnerty, Jr., Chief Counsel, grievance Committee for the Tenth Judicial District. The Respondent appeared pro se.

The Respondent called no witnesses and introduced no exhibits. The Petitioner called one witness and introduced three exhibits.

CHARGE ONE OF THE PETITION

Respondent converted escrow monies belonging to his client, William N. Mairs, Jr., in the manner hereinafter specified:

1. In or about 1982, respondent was retained by William N. Mairs, Jr., a disbarred attorney to represent him in connection with Mairs' application for reinstatement in the First Judicial Department.

2. Mairs had been disbarred for conversion of funds belonging to the Estate of Jane Farrell.

3. In or about December 1983, Mairs opened an interest bearing escrow account so that restitution could be made to the heirs of the Farrell Estate.

4. The aforesaid account was opened at National Westminster Bank, New Hyde Park branch, account # 2-020-61130-5. Respondent was nemed as the escrowee.

5. Mairs made an initial deposit of $10,300.00 and in June 1985, made a second deposit of $9,200.00

6. Under the terms of the escrow agreement no

withdrawals were to be made until the persons entitled to restitution were identified and located.

7. In September 1985, Mairs learned that respondent had withdrawn $3,050.00 from this account on June 28, 1985 for respondent's own use and benefit.

8. The aforesaid withdrawal was made without the knowledge or consent of Mairs.

9. By engaging in the aforesaid conduct respondent violated DR 9-102 of the C.P.R.

CHARGE TWO OF THE PETITION

Respondent neglected his duties and obligations as the attorney for William N. Mairs, Jr. and engaged in conduct involving fraud, deceit and misrepresentation in the manner hereinafter specified:

1. There were eight heirs to the Estate of Jane Farrell. Five lived in Ireland and three lived in the United States.

2. Prior to retaining respondent, Mairs had been in contact with Alphonsus Farrell who lived in Ireland and was acting as an intermediary on behalf of the other heirs in Ireland.

3. After retaining respondent, Mairs asked respondent to contact Alphonsus Farrell for the purpose of arranging restitution.

4. Respondent advised Mairs that he had written to Farrell and to the heirs in the United States on three occasions but had received no reply.

4. Respondent advised Mairs that he had written to Farrell and to the heirs in the United States on three occasions but had received no reply.

5. Respondent advised Mairs not to attempt to contact Farrell again.

6. Thereafter respondent argued in Mairs application for reinstatement that Mairs had done his best to fulfill his obligations but his efforts to resolve the matter were un-

successful due to a lack of cooperation on the part of the heirs.

7. The aforementioned argument was unsuccessful.

8. Mairs thereafter learned that the letters which respondent claimed to have sent to the heirs were never received by them.

9. Mairs retained new counsel who wrote to the heirs and an immediate response was received from them accepting the settlement proposals.

10. By engaging in the aforesaid conduct respondent violated DR 1-102 (A)(5) and DR 7-101(A)(2).

CHARGE THREE OF THE PETITION

Respondent has failed to maintain escrow monies in an escrow account and had converted escrow funds belonging to his client Edward A. Semidei in the manner hereinafter specifies:

1. Respondent represented Edward A. Semidei in an action for divorce.

2. On May 13, 1985, pursuant to an agreement in the aforesaid action, Elsie Semidei issued tow certified checks in the amounts of $5,000.00 and $1,000.00. Each check was payable to Edward A. Semidei and Paul Weiss, Esq.

3. On May 16, 1985, respondent deposited both checks into account # 171-0641750 maintained at Manufacturers Hanover Trust Co. in the name of Paul A. Weiss, attorney-at-law.

4. On May 31, 1985, and continuing through June 20, 1985, the balance in the aforementioned account was less Edward Semidei's interest in it.

5. On June 7, 1985, respondent issued a check to Edward Semidei in the amount of $2,950.00 drawn on the aforementioned account.

6. The aforesaid check was returned for insufficient funds.

7. On or about June 28, 1985, Edward Semidei ap-

peared at respondent's office and demanded payment.

8. On June 28, 1985, respondent went to National Westminster bank where he maintained account # 2-020-61130-5 designated Paul Weiss Escrow and withdrew $2,950.00 in a cashier's check payable to Edward Semidei and $100.00 is cash which respondent kept.

9. The aforesaid withdrawal was made against funds held in escrow for another client of respondent's, William N. Mairs, Jr.

10. By engaging in the aforementioned conduct respondent has violated DR 9-102(A)(B) and DR 1-102(4)(6) of the C.P.R.

CHARGE FOUR OF THE PETITION

Respondent has failed to maintain a proper escrow account and has engaged in conduct adversely reflecting on his fitness t practice law in the manner hereinafter specified:

1. On or about March 14, 1977, Blanche Zam, now Blanche Darling entered into a contract to purchase a house.

2. Ms. Zam (Darling) was represented by Myron Kanter, Esq. and the sellers, Kavros, by Bernard Fremont of Fremont & Weiss.

3. Ms. Zam (Darling) turned over $2,350.00 in escrow to Fremont as a downpayment.

4. No closing took palce and litigation was commenced for the return of the escrow, Zam v. Kavros, Fremont & Weiss.

5. On or about January 30, 1981, respondent signed a stipulation concluding the aforementioned litigation. The stipulation provided that clear title was to be conveyed to Zam (Darling) on the property by March 30, 1981 or the downpayment was to be returned to her. If neither term was met Zam (Darling) had the right to enter judgment

against all named defendants.

6. Judgment was entered against the defendants on April 13, 1981 for the sum of $3,027.25 (deposit plus interest and costs).

7. The law firm of Fremont and Weiss dissolved in or about 1981.

8. Attempts by Myron Kanter to collect the jdugment were unsuccessful.

9. In or about January 1983, respondent paid $1,100.00 to Kantor on the judgment.

10. Respondent acknowledged that no escrow funds remained in the Fremont and Weiss Account.

11. In April 1985, respondent had a telephone conversation with Blanche Zam (Darling) in which he promised to pay the balance remaining on the judgment in May 1985. Respondent has no done so.

12. By engaging in the aforesaid conduce respondent has violated Dr 9-102 (B)(4) and DR 1-102(A)(6) of the C.P.R.

FIFTH The respondent, Paul A. Weiss, knew or should have known in committing the above described acts he was guilty of professional misconduct within the meaning of Section 691.2 of the Rules Governing the Conduct of Attorneys, Appellate Division, Second Department.

CHARGE ONE, TWO AND THREE

The Respondent has conceded the charges herein stated as evidenced by the following excerpts from the minutes of the various hearings, which I have set forth herein.

His claim is that this situation was an aberration on his part and that it has not occurred prior nor subsequently to this matter.

In his response to the Petition of the Grievance Committee, the Respondent, pro se, admitted the allegations of Charges 1 and 2, except that he denied paragraphs 5, 7,

8, 9 and 10 in Charge 2. (See page 4 and 5 of the minutes of April 17, 1991).

"MRS. MORAN: But also, your Honor, with respect to Mairs, Mr. Weiss has denied 7,8 and 9; paragraphs designated 7, 8 and 9 of Charge 2. I don't know that that is critical to this charge.

THE HEARING OFFICER: 7, 8 and 9 are denied.

MRS. MORAN: Yes.

THE HEARING OFFICER: What about the rest of it?

MRS. MORAN: The rest of it is admitted, your Honor, with the exception of Paragraph 5.

In other owrds, under Charge 2, Mr. Weiss has denied Subparagraphs 5, 7, 8 and 9.

THE HEARING OFFICER: 5 --

MRS. MORAN: 7, 8 and 9.

THE HEARING OFFICER: And he would, of course, not admit 10.

MRS. MORAN: No.

THE HEARING OFFICER: Because 10 says that he violated -- that's under 2 now or 1?

MRS. MORAN: Under 1, I have "all admitted."

THE HEARING OFFICER: Admitted; is that correct, sir?

THE WITNESS: Yes, sir.

THE HEARING OFFICER: Now, let's get to 3.

MRS. MORAN: 3, I have all admitted."

See page 74 of the minutes of April 19, 1991, in which the Respondent admits taking the $3,200.00 as set forth in Charge 3.

"There is no question, I admit taking the $3,200.00 dollars. Myself.

I had fallen below the monies given to me by Edward

Semedei, simply because I had to make payment of another check from that account to another client who wanted the money immediately, and the check had not cleared.

I had intended to, and I did replace the money to Mr. Semedei's account at approximately the same time I replaced Mr. Mair's money. Replaced it in full. Nobody lost any money by my deflacation.

I'm not proud of it. Had I possession of my senses, full possession, I might have been able to resist the other client. I cannot say yes or no."

CHARGE FOUR

The Respondent now denied any knowledge or information sufficient to form a belief as to the allegation in Charge 4, and states that the monies given to Zam (Darling) were not deposited in the escrow of Fremont and Weiss, as partners, and that after the hospitalization of Bernard Fremont, Esq. and upon his examination of the escrow books and account in the name of Fremont and Weiss, he learned that there were no escrow funds remaining and Respondent further states that he took no escrow funds from said account.

Then he stated further in his testimony of April 19, 1991, that he had not paid the Darling's the judgment of approximately $2,000.00 in nine or ten years because he had assumed that his partner, Mr. Fremont, had paid it pursuant to his agreement. (See page 83 of the said minutes of April 19, 1991).

The Respondent further concedes that he was aware of the fact that a judgment was outstanding and that the Darling's were complaining about it and that he did not make any arrangement to pay that judgment since 1985. (See minutes of April 19, 1991, Page 84). The Respondent further stated that he was unable to pay any judgment

because all of his funds are tied up in equitable distribution and that he made an effort to communicate with Mr. Fremont, his former law partner, several times and that the judgment remains on record against him.

CONCLUSION

There is no question that the charges enumerated herein have been adequately proven. *The Court's attention is respectfully directed to the statement of the Respondent that this situation was an aberration.*

The Respondent further testified that he was admitted in 1958 and is currently 60 years of age; that he is participating actively as a member of the pro bono panels of Nassau County and Suffolk County and is a lecturer for the Academy of Law of both counties. He stated further that in 1984, he was diagnosed as having severe hypertension and was hospitalized at St. John's Episcopal Hospital and was diagnosed as having duodenal ulcers and emotional stress reaction.

(see minutes of April 19, 1991, pages 72-74).

"At the time I was having problems. My mother, who was a diabetic, eighty-two years of age, was put into the hospital with gangrene. Six weeks later, we persuaded her to have the knee and toe operated on. It was too late. She passed on about three weeks after.

I was also having trouble with my wife. I might add for the record, as of this past Monday, April 22, an interim judgment of divorce was granted, and with the equitable distribution aspect still open.

I was unable to handle the stress. I was on Vasotec (sic), ten milligrams, three times a day. That is a hypertensive, or anti-hypertensive.

I took Dyazide, ten milligrams a day. That's a diuretic.

At the same time I was taking Prednisone, twenty

milligrams, twice a day. Prednisone is an anti-inflammatory.

The combination of those drugs causes me at times to be dizzy, nauseous.

And to put it very bluntly, sometimes go off the wall.

At the time, I was having pressures with Mr. Mairs, who is not the easiest client. *Most lawyers are not easy clients; myself included.*

I was having problems with my mother, my sister, my wife.

May 21, 1991
Ms. Moran
Page 2

Someone told me about being a Volunteer Lawyer in matrimonials. It was before the organized Volunteer Lawyers Project. Tom Maligna was in charge and he won the New York State Young Lawyers Award that year because of the work he did with the program.

I volunteered for as many cases as they would send me. I think the fee was about $25.00 an hour--if the client could afford it. Otherwise--no fee. I didn't mind. I actually loved it. I figured I could never get so much experience so quickly any other way, and my clients were getting the benefit of a mature, intelligent, compassionate, "young" lawyer.

I had been very idealistic for the first fifty years of my life and though practicing law is probably the fastest way to destroy such idealism, I managed to survive the hammering blows to my integrity, my principles, my very being that I encountered in those days.

And Paul Weiss was one of the reasons I survived.

One of my volunteer cases was "T" v. "T", a matrimonial. He was the plaintiff; she was my client. It was an unusual set of facts. She was around 60, he around 70, and they were divorcing. They were both Holocaust survivors. Money reared its ugly head and the battle got bloody.

She discharged two prior lawyers because she felt she could no longer afford legal fees. The Honorable James Brucia did not want to proceed without Mrs. T being represented and he requested aid for her. I was asked to represent her pursuant to the Volunteers Lawyers Program on a no--FEE basis. The major issue between the parties was a home worth well over $125,000. There was an additional equal amount in liquid assets. My memory is slightly frail on the details, but as best as I can recall, a lot of paper work was required. A cross motion with an affidavit that ran at lease thirty pages was submitted on behalf of my client. Our cross motion was denied and unless settled, we would have to go to trial. The prior attorney had waived discovery and it was denied to me in the motion. But we anticipated completing discovery with the plaintiff on the stand.

My son was graduating Stony Brook University at the time, with a double baccalaureate, which I'm very proud of; cum laude; both of them. I just couldn't handle myself."

The Respondent submitted an affidavit is herewith annexed and made part of the report.

The Court's attention is also directed to the Matter of George LaCava, an Attorney, Respondent, vs. New York State Bar Association, Petitioner, Supreme Court, Appellate Division, Fourth Department.

It was recently stated in Matter of Iversen, 51A.D. 2d 422, 381 N.Y. S2d 711, decided April 9, 1976:

"An attorney holds money that he collects for a client as a trustee and he is obligated to keep it separate from his own and pay it over to the client on demand. If he fails to do so and uses the client's money for any purpose of his own, he violated his professional duty and should be disciplined (Matter of Braun, 11 A.D.2d 147, 204 N.Y.S. 2d 194; Matter of Babcock, 230 App. Div. 323, 325, 243, N.Y.S. 489). It is no defense that the attorney intended to and did, in fact, reimburse the client (Matter of Detsky, 16 A.D. 2d 595, 229 N.Y.S. 2d 869; Matter of Coleman, 178 App. Div. 580, 583, 165 N.Y.S. 685). The conversion is complete when the account in which the client's funds are deposited is overdrawn or when the balance of the account is less than the client's interest in it, and the conduct of the attorney is not excused because the improper handling of the funds is due to mismanagement rather than misconduct (Matter of LePore, 39 A.D. 2d 261, 334 N.Y.S. 2d 102; Matter of Raines, 38 A.D. 2d 459, 330 N.Y.S. 2d 669).

Dated: Kew Gardens, New York

June 13, 1991

Respectfully submitted,

MOSES M. WEINSTEIN
REFEREE

My client suffered from a heart condition and kept threatening to have a heart attack if forced to take the stand, but she insisted on fighting this latest legal maneuver by her husband.

I had never conducted an equitable distribution trial, (not had many people in 1983). It was a new concept and a lot of law has passed since then on the subject. In reviewing the file, the history of the parties, their community involvement, I became more and more agitated. I felt too inexperienced in the practice of law to proceed to trial and I definitely felt too inexperienced in the practice of meanness and dishonesty to deal with my adversary. Meanwhile, I went to lunch every day at the center table and kept asking questions--asking for opinions on this and that and looking for some direction as to how to proceed.

One man decided to become my mentor. He is an "injustice collector", a Don Quixote who likes to brandish his sword and fight the wrongs, even after twenty plus years of practicing law. Frequently, the harsh comments and hostile joking is misunderstood as being the real Paul Weiss. Actually, the real Paul Weiss is a kind, caring man who is deeply touched by inequities, unfairness, indifference and some rotten lawyers. Paul Weiss cares for people.

He offered to help me almost immediately. He carefully reviewed the motion I submitted and kept telling me, at lunch, over the following months that if I ever had to go to trial, he would second chair me.

Well, it happened! We were ordered to trial. I called Paul Weiss on a Friday and told him I had to start the trial Monday Morning and outlined all the things that I thought had to be done that were not done and asked for guidance. I needed money for subpoenas and I needed time.

He said "Don't worry, I'll be there Monday morning!" And he was--and he took first chair. After one week of trial, it was adjourned for several weeks giving me time and opportunity for discovery. By that time, I had learned more about law and lawyering then I had in the last two years of law school. Paul's oral motion for expense money was granted and I was able to proceed. Paul also applied for legal fees for me and I was granted $500.00.

When it was time to return to court, Paul was actually engaged in Queens and I appeared asking for an adjournment on our behalf. I reminded the court of the circumstances--of Paul agreeing to try the case and of my inexperience. The court decided I was experienced enough to continue and denied my application. After four weeks or so of adjournments, testimony, etc., it was over. The court issued a fourteen-page decision and essentially, my client won (more than Paul ever though possible). The court mentioned that I had submitted a request for attorney fees which were modest indeed at $75.00 an hour. He could have awarded me about $12,000 and even though the parties had sufficient assets to pay me, that had not been the agreement and I was therefore denied any fee at all.

At least three months of my time plus weeks of Paul Weiss's time had been expended for free. Paul was very pleased and surprised at the entire decision and felt I must had done a very good job. If I did, it was because of the months of Paul talking to me about the case and helping me, inspiring and calling me. I was grateful for his compliments.

Eventually, I had to engage in post judgment enforcement, engage a Florida attorney to proceed on my client's behalf, and ultimately earned a small amount of money for which I was grateful. Paul Weiss received only my thank you. It was a nice thank you and I had intended to enclose a copy for your review, however I am in the hospital at this time and do not have it at hand.

Today, seven years later almost to the day, Paul Weiss is suffering over something regarding the practice of law and I am forced by illness, to give up my office. I hope to continue the practice law on a limited basis as long as God grants me the time to live; but under any circumstances, there is little enough time left.

When I review my short experience as a lawyer, I think of all the real crumbs in this world, it saddens me to think that Paul Weiss has to defend hmself because he happens to be a decent guy with a heart. I can relate to that. It seems it's always that way, lately.

Sincerely,

MARION ALTMAN
MA:jo d/31
cc: Paul Weiss, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE
FOR THE TENTH JUDICIAL DISTRICT,

Petitioner,

-against-

PAUL A. WEISS

Respondent.

#90-01206
NOTICE OF MOTION
TO CONFIRM REPORT
OF REFEREE

S I R S :

PLEASE TAKE NOTICE that upon the annexed affirmation of GRACE D. MORAN, Deputy Counsel to the petitioner herein, dated June 24th, 1991, and upon the report of the HON. MOSES M. WEINSTEIN, Special Referee, filed with the Clerk of this Court on June 13, 1991, the siad HON. MOSES M. WEINSTEIN, having been duly appointed by order of this Court made and filed on the 13th day of December, 1990, to hear and report his findings upon each of the issues, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a term appointed to be held on the 26th day of July, 1991, at 9:30 o'clock in the forenoon of such day, or as

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS
An Attorney and Counselor-at-Law,

THE GRIEVANCE COMMITTEE FOR
THE TNETH JUDICIAL DISTRICT,

Petitioner

-against-

PAUL A. WEISS

Respondent.

AFFIRMATION

GRACE D. MORAN, an attorney duly licensed to practice

penalties of perjury:

I am Deputy Counsel to the petitioner herin, and am fully familiar with all the facts and proceedings heretofore had herein. This affirmation is submitted in support of instant motion to confirm in full the findings contained in the report of the Special Referee in this disciplinary proceeding. HON. MOSES M. WEINSTEIN, dated June 13, 1991.

This disciplinary proceeding was initiated by the GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT as a result of respondent's alleged misconduct. As is more fully set forth in the petition

herein, respondent is charged with four (4) separate acts of misconduct, including conversion of client escrow funds, the neglect of legal matters entrusted to him, and conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct adversely reflecting on his fitness to practice law.

Pursuant to Judiciary Law, Section 90 Subdivision 7, the Appellate Division, Second Department, authorized and directed the petitioner to institute the instant disciplinary proceeding against PAUL A. WEISS, who had been admitted to practice as an attorney and counselor-at-law by the same Court on June 18, 1958. Respondent was served personally with a copy of the notice of petition and petition on or about May 11, 1990. The respondent filed an answer to the petition on July 3, 1990. On December 13, 1990, this Court referred the allegations raised by the petition and the answer to the HON. MOSES M. WEINSTEIN, as Special Referee, to hear and to report with his findings upon each of the issues.

A hearing was held before JUSTICE WEINSTEIN, a Special Referee, on April 17, 19 and May 7, 1991. The Special Referee heard testimony from one (1) witness and received three (3) exhibits into evidence on the behalf of the petitioner soon thereafter as counsel can be heard, at the Courthouse, 45 Monroe Place, Brooklyn, State of New York, for an order:

1. Confirming in full the findings the Special Referee that sustain Charges 1, 2, 3, and 4, as alleged in the petition; and

2. Imposing such discipline upon respondent as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 2214(b) CPLR, answering affidavits, if any, must be served upon the undersigned at least five (5) days prior to the return date of this motion.

DATED: Westbury, New York
June 24, 1991

Yours, etc.,

FRANK A. FINNERTY, JR., Chief Counsel
Attorney for Petitioner
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT
900 Ellison Avenue
Westbury, NY 11590
(516)832-8585

GRACE D. MORAN, of Counsel

TO: Hon. Moses M. Weinstein
Special Referee
Weinstein & Weinstein
123-35A 82nd Road
Kew Gardens NY 11415

Paul A. Weiss, Esq.
Respondent pro se
350 Old Country Road
Garden City NY 11530

The Special Referee heard testimony of the respondent himself and received one (1) exhibit on his behalf, a letter attesting to respondent's good character.

A record totalling approximately one hundred and eighteen (118) pages was made at the hearings, to which this Court is respectfully referred.

The Special Referee filed a fifteen (15) page report with this Court dated June 13, 1991, wherein he found that all four (4) of the charges of professional misconduct alleged in the petition had been fully sustained by the proof.

RESPONDENT'S PRIOR DISCIPLINARY RECORD

On June 29, 1984 the Grievance Committee for the Tenth Judicial District issued a Letter of Admonition to the respondent, PAUL A. WEISS, for his failure to maintain adequate escrow records, failure to communicate with other attorneys and failure to cooperate with the Grievance Committee. On the same date a second Letter of Admonition was issued to respondent for misrepresenting that title to certain property was in his client and for failing to cooperate with the Grievance Committee. Copies of these letters are annexed as Exhibits A, and B.

WHEREFORE, petitioner respectfully moves to confirm the report of the Special Referee, HON. MOSES M. WEINSTEIN, in its entirety and requests that the Court impose such discipline upon the respondent as the Court may deem just and proper under the circumstances.

GRACE D. MORAN

Dated: Westbury, New York
June 24, 1991

STATE OF NEW YORK
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT
158 THIRD STREET
MINEOLA, NEW YORK 11501
(516)741-4224

June 29, 1984

Paul A. Weiss, Esq.
370 Old Country Road
Garden City, NY 11530

Re: File No. 02682-N

Dear Mr. Weiss:

On June 20, 1984, the Grievance Committee for the Tenth Judicial Districe considered the complaint filed against you by Mr. & Mrs. John Gioffre (Jane Betsch).

It was the decision of the Committee that pursuant to Section 691.4(e)(3) of the Rules of the Appellate Division of Supreme Court, Second Department, you be admonished because of your apparent misrepresentation that title to the subject preperty was in your client and for your failure to fully cooperate with the investigation of this matter.

This letter is issued in accordance with the Rules Governing the Conduct of Attorneys of the Appellate Division, Governing the Conduct of Attorneys of the Appellate Division, Second Department, Section 691.6 to which you should refer concerning your rights thereunder.

This admonition is the most severe sanction this Com-

mittee can issue short of a recommendation for formal disciplinary proceedings before the Appellate Division.

The comp.ainant will not receive a copy of this letter but will be advised that appropriate action has been taken in the form of a private admonition.

Very truly yours,

KENNETH J. LUCEY
Chariman

KJL:P:emh
Certified Mail: R.R.R.

STATE OF NEW YORK
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT
158 THIRD STREET
MINEOLA, NEW YORK 11501
(516)741-4224

June 29, 1984

Personal and Confidential

Paul A. Weiss, Esq.
370 Old Country Road
Garden City, NY 11530

Re: File No. 54581-N

Dear Mr. Weiss:

On June 20, 1984, the Grievance Committee for the Tenth Judicial District considered the complaint filed against you by William E. Mariano, Esq., on behalf of Richard Milk.

It was the decision of the Committee that pursuant to Section 691.4(e)(3) of the Rules of the Appellate Division of the Supreme Court, Second Department, you be admonished for your failure to (1), keep accurate records; (2) , communicate with other attorneys and (3), fully cooperate with the Grievance Committee.

This letter is issued in accordance with the Rules Governing the Conduct of Attorneys of the APpellate Division, Second Department, Section 691.6 to which you should refer concerning your rights thereunder.

This admonition is the most severe sanction this Committee can issue short of a recommendation for formal disciplinary proceedings before the Appellate Division.

The complainant will not receive a copy of this letter but will be advised that appropriate action has been taken in the form of a private admonition.

Very truly yours,

KENNETH J. LUCEY
Chariman

KJL:emh:P
Certified Mail: R.R.R.

SUPREME COURT, STATE OF ENW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

In the Matter of PAUL A. WEISS, an Attorney and Counselor at Law, Grievance Committee for the Tenth Judicial District,

Petitioner,

PAUL A. WEISS,

Respondent.

NOTICE OF CROSS-MOTION

DATE, TIME, PLACE:

August 16, 1991, 10:00 A.M.
APpellate Division, 45 Monroe Place, Brooklyn, N.Y.

PURPOSE:

Partial confirmation, partial disaffirmation of the Findings of the Special Referee, and imposition of discipline.

DOCUMENTS:

Record of the Hearing; Special Referee's Findings and Report, Petitioner's Motion and Exhibits;

Respondent's affidavit dated
August 13, 1991.

DATED: Garden City, New York
August 13, 1991.

NATH & WEISS
For the Respondent
300 Garden City Plaza - Suite 234
Garden City, New York 11530
(516) 741-7556

TO: FRANK A. FINNERTY, JR.
(Grace D. Moran, Esq., of Counsel)
Attorney for Petitioner
900 Ellison Avenue
Westbury, New York 11590
(516)832-8585

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

In the Matter of PAUL A. WEISS, an Attorney and Counselor at Law, Grievance Committee for the Tenth Judicial District,

Petitioner,

PAUL A. WEISS,

Respondent.

STATE OF NEW

COUNTY OF NASSAU

SS.:

PAUL A. WEISS, being sworn deposes and says:

1. Deponent is the Respondent in this grievance proceeding. This affidavit is made in support of Respondent's Cross-Motion to partially confirm and partially disaffirm the report of the Special Referee, Hon. Moses M. Weinstein. This application further supports the imposition of discipline upon the Respondent.

2. Judge Weinstein's Report recommends confirmation of all of the charges "as proven at the hearings."

But, only tow of the four charges have been established, and that by the Respondent's prior and candid admissions. The two other charges were not proven by a preponderance of the credibe and admissible evidence.

CHARGES ONE AND THREE

3. These charges were admitted by Respondent's answer to the petition. Other than William N. Mairs, Jr., no witnesses were called by the Petitioner for none were required, except for mitigation punishment.

4. Respondent thus, joins with the Petitioner in seeking confirmation of charges One and Three. These charges will be addressed as to the discipline to be imposed.

CHARGE TWO

5. Accuses Respondent of "neglecting his duties as the attorney for William N. Mairs, Jr.; and engaging in conduct involving fraud, etc."

6. Only Mr. Mairs testified for Petitioner, and certain letters were marked into evidence. Mr. Mairs admitted on cross-examination that "he did not *personally* know that Respondent did not mail the letters." Mr. Mairs also testified as to the animosity between the Irish heirs and he; and that Mr. Weiss' letters suggested that the Irish heirs retain legal counsel to review several releases in order to receive their checks. There was no testimony or indicia thereof from Ireland, or from Mr. Mairs' attorney, to prove otherwise.

7. Conversely Respondent testified (on cross-examination) that "he wrote to Ireland on two occasions, but received no response." And, "that he should have written to Ireland by certified or registered mail, but did not so do."

8. Petitioner did not refute Respondent's sworn testimony; nor did Petitioner prove by a reasonable preponderance of the credible evidence, this charge. Rather, Petitioner's testimony was hearsay. And, as Mr. Mairs actually was reinstated to the Bar, Petitioner did not prove an impact adverse to him, by the accusation. Nor,

were any members of the First Department's Disciplinary Committee called to testify in support of Charge Two.

9. Petitioner did not establish that Respondent neglected his duties and obligations as attorney for Mr. Mairs, nor that Respondent engaged in fraud and misrepresentation.

10. This charge was not proven by any concept of a preponderance of credible, admissible evidence; this charge proerly should be disaffirmed and dismissed.

CHARGE FOUR

11. This charge involves a Mrs. Zam (Darling), a client of the long defunct law firm of Fremont & Weiss. Mrs. Zam's monies were converted by Bernard Fremont, Esq. (as established by the Charge, the Findings, and the grievance proceedings against Fremont in 1981).

12. No testimony was addressed by Petitioner. Nor Petitioner admit that this event had previously been investigated by Petitioner's office, and that in 1981 a hearing ("Matter of Bernard Fremont") was held involving amongst other charges, the conversion of Mrs. Zam's money. (Respondent at such time was *wholly exonerated of any wrong doing, whether conversion or failing to maintain a proper escrow account).*

13. This charge is barred by res judicata, and by collateral estoppel. It was also not proven by the Petitioner and properly should be disaffirmed and dismissed.

14. No witnesses were called by the Petitioner (presumable, Mrs. Zam was avaialable; and surely, Myron Kanter, Esq. her attorney, could not have refused to cooperate with the Grievance Committee). Yet, neither Mrs. Zam nor Mr. Kanter were called on Petitioner's behalf.

15. The only credible proof was addressed by the Respondent who admitted to:

a. singing *on behalf of Fremont & Weiss, then defunt,* a confesion of judgment binding Messrs. Fremont & Weiss to repay to Mrs. Zam the monies converted by Bernard Fremont;

b. paying about $1,500.00 of his own monies (plus other sums to other clients) to Mrs. Zam through her attorney, Mr. kanter;

c. Mr. Fremont's obigation (agreement between Weiss and him) to pay to Mrs. Zam (and others) half of the total sums converted by Fremont;

d. dissolution of Fremont & Weiss in March, 1978 (not 1981) upon Weiss' discovery of Fremont's conversion of the entire escrow funds;

e. Weiss being the trial or "court" attorney rarely at the office, with Fremont as the housekeeping partner, with Weiss relying upon Fremont's integrity;

f. Weiss' current inability (because of a five year 'ongoing' equitable distribution divorce) to pay Mrs. Zam Fremont's "share" of the stipulated judgment.

16. That Fremont did not maintain a proper firm escrow account had previously been established by the grievance proceedings against Mr. Fremont. But, those same proceedings established beyond any doubt that Fremont alone was the culpable person, and Weiss learned of Fremont's defalcations long after the fact, and embarked upon conduct to "set matters right."

17. In his wholly unrefuted testimony, Respondent admitted to his current financial inability to pay the "other half" of the monies to Mrs. Zam, but his willingness to do so as soon as he is financially able. (Respondent candidly testified to the total 'ruin' of his credit and inability to borrow due to the divorce action, and the numerous debts placed upon him). Respondent denied any phone conversations with Zam; this was not refuted.

18. Other than current financial deprivation, Respondent committed no acts of the misconduct herein

charged; and the Petitioner not only failed to prove this charge by a reasonable preponderance of the credible evidence, this charge is barred by res judicata and collateral estoppel.

19. This charge properly should be disaffirmed and dismissed.

DETERMINATION OF CHARGES

20. Charges One and Three having been admitted by the Respondent, should be confirmed as established by admission and discipline imposed.

21. Charges Two and Four have not been proven by a reasonable preponderance of the credible evidence. These charges properly should be disaffirmed and dismissed.

IMPOSITION OF DISCIPLINE

22. Conversion of escrow funds is a serious breach of trust, and it must be unished. The Second Department without consideration of mitigating circumstances, requires disbarrment as punishment; whereas the other Departments of this State consider mitigating circumstances and lesser punishment, where an appropriate circumstance exists.

23. Here, Respondent *when charged*, candidly, unequivocally and shamefully admitted his wrongdoing. There was no need for any hearing, nor leveling of additional charges which were not proven (a usual syndrome of 'prosecutorial overcharge').

24. Respondent has practiced law for thirty-three years. Other than a warning and a private censure (both occurring essentially during the same period of time as the events herein), his record has been unblemished. He is now sixty-one years old. Disbarrment or a suspension of the privilege of practice will result in an ignominious finish to

an otherwise long and honorable career, for Respondent will ever be able to return to the Law.

Additionally, disbarrment or suspension will adversely and quite strongly impact upon the equitable distribution part of Respondent's divorce. Without a law practice, Respondent's ex-wife might be awarded all of the marital home, all of the considerable assets, monies and properties she "converted unto herself" in the months prior to the divorce action. And, Respondent will become destitute and disgraced with no means of earning a living.

25. Little has been said regarding the disciplinary proceeding against Bernard Fremont, Esq. But, the record does contain brief testimony from the Respondent as to Respondent's payment of Fremont's defalcations.

26. Such testimony was not refuted. Nor was testimony refuted as to the bizarre result of the intereaction of the medications prescribed by Respondent's then physician. Respondent is now stabilized with both, hypertension and ulcer under control.

27. Respondent is proud of his profession, although shamed at the aberration resulting in this proceeding. At present, Respondent continues as a mentor, and in pro bono activities. Currently, he does not lecture at law seminars. But, Respoindent does speak at libraries, and high schools, on the law and legal subjects.

28. Respondent merits punishment for his aberrational behavior in violation of the Code of Professional Conduct and the disciplinary Rules; the Court however, should consider all mitigating factors and impose discipline short of disbarrment or suspension.

WHEREFORE, Respondent requests confirmation of the Findings as to Charges One and Three; disaffirmation of the Findings as to Charges Two and Four; and imposition of discipline in the form of a public cnesure.

PAUL A. WEISS

Sworn to before me on

August 13, 1991.

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

____AD2d____

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
JOSEPH J. KUNZEMAN
CORNELIUS J. O'BRIEN, JJ.

90-01206

In the Matter of Paul A. Weiss,
an attorney and counselor-at-law.

Grievance Committee for the Tenth
Judicial District, petitioner;
Paul A. Weiss, respondent.

OPINION & ORDER

DISCIPLINARY proceeding instituted by the Grievance Committee for the Tenth Judicial District. The respondent was admitted to the Bar on June 18, 1958, at a term of the Appellate Division of the Supreme Court in the Second Judicial Department. By order of this court dated December 13, 1990, the isssues raised by the petition and answer were referred to the Honorable Moses M. Weinstein, a retired Associate Justice of the Appellate Division, Second Judicial Department, as Special Referee to hear and report.

Frank A. Finnerty, Jr., Westbury, N.Y. (Grace D. Moran of counsel), for petitioner.

Paul A. Weiss, Garden City, N.Y., for respondent *pro se*.

PER CURIAM. In this proceeding, the Special Referee sustained the four charges of professional misconduct against the respondent. The petitioner moves to confirm the report of the Special Referee, and the respondent cross-moves to confirm the report to the extent that it sustains Charges One and Three, to disaffirm the report to the extent that it sustains Charges Two and Four, and for the imosition of a public censure.

After reviewing all of the evidence, we are in agreement with the report of the Special Referee to the extent that it sustained Charges One and Three. Charges Two and Four were not sustained by the evidence.

Charge One alleged that the respondent converted escrow moneys belonging to his client. In or about 1982, the respondent was retained by a disbarred attorney to pursue an application for reinstatement to the New York Bar. His client's disbarment was based upon a finding of the conversion of estate funds. In or about 1983, in furtherance of the application for reinstatement, the disbarred attorney opened an interest-bearing escrow account for the payment of restitution of the estate funds, naming the respondent as escrowee. On June 28, 1985, the respondent withdrew $3,050 from the escrow account, without the consent of his client, for his own use and benefit.

Charge Three alleged that the respondent failed to maintain escrow moneys in an escrow account and converted escrow funds. The respondent was retained to represent a husband in a divorce action. On May 13, 1985, the wife issued two certified checks in the amounts of $5,000 and $1,000, respectively, each check payable to the respondent and his client. On May 16, 1985, the respondent deposited the two checks into his account at the Manufacturers Hanover Trust Co., entitled "Paul A. Weiss, attorney-at-

law''. Between May 31, 1985, and June 20, 1985, the respondent issued a check to his client in the amount of $2,950, drawn on that account, which was subsequently returned for insufficient funds. On June 28, 1985, after his client demanded payment, the respondent went to the National Westminster Bank, where he maintained an account designated ''Paul Weiss Escrow'', and withdrew $2,950, in the form of a cashier's check, payable to his client, and $100 in cash which the respondent kept. This withdrawal was made against funds held in escrow for another client.

The respondent is guilty of the misconduct set forth in Charges One and Three. The petitioner's motion to confirm the report of the Special Referee is granted only to the extent that it sustains Charges One and Three and is otherwise denied. Those branches of the respondent's cross motion which are to confirm the Referee's report with respect to Charges One and Three, and disaffirm the Referee's report with respect to Charges One and Three, and disaffirm the Referee's report with respect to Charges Two and Four are granted, and Charges Two and Four are dismissed. However, that branch of the respondent's cross motion which is for imposition of a public censure is denied.

In determining an appropriate measure of discipline to be imosed, we have taken into consideration the respondent's prior disciplinary history which includes two Letters of Admonition issued on June 29, 1984. One admonition was for failure to maintain adequate escrow records,a failure to communicate with other attorneys, and a failure to cooperate with the Grievance Committee. The second admonition was, *inter alia*, for misrepresenting that title to certain property was in his client's name. The respondent is guilty of serious professional misconduct. Accordingly, the respondent is disbarred forthwith.

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and O'BRIEN, JJ., concur.

ORDERED that the petitioner's motion to confirmt he report of the Special Referee is granted to the extent that it seeks to sustain Charges One and Three and is otherwise denied; and it is further,

ORDERED that that branch of the cross motion which is for the imposition of a public censure is denied; and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent Paul A. Weiss is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys (22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent Paul A. Weiss is commanded to desist and refrain (1) from practicing law in any form, either as principal or as agent, clerk or employee of another, (2) from appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public athority, (3) from giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) from holding himself out in any way as an attorney and counselor-at-law.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
THOMAS R. SULLIVAN
CORNELIUS J. O'BRIEN, JJ.

90-01206 Atty.

In the Matter of Paul A. Weiss,
a disbarred attorney.

DECISION & ORDER ON MOTION

Grievance Committee for the Tenth
Judicial District, petitioner;

Paul A. Weiss, respondent.

Motion by the respondent for reargument of the petitioner's motion to confirm the Special Referee's report and vacating this court's order of November 25, 1991, disbarring him and striking his name from the roll of attorneys. The respondent was admitted to the practice of law by the Appellate Division, Second Judicial Department on June 18, 1958.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied in its entirety.

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and O'BRIEN, JJ., concur.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

In the Matter of PAUL A. WEISS,
An Attorney and Counselor-at-Law.

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

NOTICE OF ENTRY
#90-01206

Petitioner,

PAUL A. WEISS

Respondent.

S I R :

PLEASE TAKE NOTICE that within is a true copy of an Order duly made and entered in the within entitled Court and filed in the Office of the Clerk of the Appellate Division of the Supreme Court, Second Department, on the 25th day of November, 1991.

Dated: December 5, 1991
Westbury, New York

Yours, etc.,

FRANK A. FINNERTY, JR., Chief Counsel
Grievance Committee for the Tenth

Judicial District
900 Ellison Avenue - Suite 304
Westbury, New york 11590
(516)832-8585
GRACE D. MORAN, of Counsel

TO: Paul A. Weiss, Esq.
300 Garden City Plaza
Suite 234 Street
Garden City NY 11501

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

____AD2d____

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
JOSEPH J. KUNZEMAN
CORNELIUS J. O'BRIEN, JJ.

90-01206

In the Matter of Paul A. Weiss,
an attorney and counselor-at-law.

OPINION & ORDER

Grievance Committee for the Tenth
Judicial District, petitioner;
Paul A. Weiss, respondent.

DISCIPLINARY proceeding instituted by the Grievance Committee for the Tenth Judicial District. The respondent was admitted to the Bar on June 18, 1958, at a term of the Appellate Division of the Supreme Court in the Second Judicial Department. By order of this court dated December 13, 1990, the issues raised by the petition and answer were referred to the Honorable Moses M. Weinstein, a retired Associate Justice of the Appellate Division, Second Judicial Department, as Special Referee to hear and report.

Frank A. Finnerty, Jr., Westbury, N.Y. (Grace D. Moran of counsel), for petitioner.

Paul A. Weiss, Garden City, N.Y., for respondent *pro se*.

PER CURIAM. In this proceeding, the Special Referee moves to confirm the report of the Special Referee, and the respondent cross-moves to confirm the report to the extent that it sustains Charges One and Three, to disaffirm the reort to the extent that it sustains Charges Two and Four, and for the imposition of a public censure.

After reviewing all of the evidence, we are in agreement with the report of the Special Referee to the extent that it sustained Charges One and Three. Charges Two and Four were not sustained by the evidence.

Charge One alleged that the respondent converted escrow moneys belonging to his client. In or about 1982, the respondent was retained by a disbarred attorney to pursue an application for reinstatement to the New York Bar. His client's disbarment was based upon a finding of the conversion of estate funds. In or about 1983, in furtherance reinstatement, the disbarred attorney opened an interest-bearing escrow account for the payment of restitution of the estate funds, naming the respondent as escrowee. On June 28, 1985, the respondent withdrew $3,050 from the escrow account, without the consent of his client, for his own use and benefit.

Charge Three alleged that the respondent failed to maintain escrow moneys in an escrow account and converted escrow funds. The respondent was retained to represent a husband in a divorce action. On May 13, 1985, the wife issued two certified checks in the amounts of $5,000 and $1,000, respectively, each check payable to the respondent and his client. On May 16, 1985, the respondent deposited the two checks into his account at the

Manufacturers Hanover Trust Co., entitled "Paul A. Weiss, attorney-at-law". Between May 31, 9185, and June 20, 1985, the balance in the respondent's account was less than his client's interest in it. On June 7, 1985, the respondent issued a check to his client in the amount of $2,950, drawn on that account, which was subsequently returned for insufficient funds. On June 28, 1985, after his client demanded payment, the respondent went to the National Westminster Bank, where he maintained an account designated "Paul Weiss Escrow", and withdrew $2,950, in the form of a cashier's check, payable to his client, and $100 in cash which the respondent kept. This withdrawal was made against funds held in escrow for another client.

The responent is guilty of the misconduct set forth in Charges One and Three. The petitioner's motion to confirm the report of the Special Referee is granted only to the extent that it sustains Charges One and Three and is otherwise denied. Those branches of the respondent's cross motion which are to confirm the Referee's reprt with respect to Charges One and Three, and disaffirm the Referee's report with respect to Charges Two and Four are granted, and Charges Two and FOur are dismissed. However, that branch of the respondent's cross motion which is for imposition of a public censure is denied.

In determining an appropriate measure of discipline to be imposed, we have taken into consideration the respondent's prior disciplinary history which includes two Letters of Admonition issued on June 29, 1984. One admonition was for failure to maintain adequate escrow records, a failure to communicate with other attonreys, and a failure to cooeprate with the Grievance Committee. The second admonition was, *inter alia*, for misrepresenting that title to certroperty was in his clients name. The respondent is guilty of serious professional misconduct. Accordingly, the respondent is disbarred forthwith.

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and O'BRIEN, JJ., concur.

ORDERED that the petitioner's motion to confirm the report f the Special Referee is granted to the extent that it seeks to sustain Charges One and Thre and is otherwise denied; and it is further,

ORDERED that those branches of the respondents cross motion which are to confirm the Referee's report with respect to Charges One and THree and to disaffirm the Referee's report with respect to Charges Two and Four are granted, and Charges Two and Four are dismissed; and it is further,

ORDERED that that branch of the cross motion which is for the imposition of a public censure is denied; and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent Paul A. Weiss is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys (22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent Paul A. Weiss is commanded to desist and refrain (1) from practicing law in any form, either as principal or as agent, clerk or employee of another, (2) from appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public authority, (3) from giving to another

an opinion as to the law or its application or any advice in relation thereto, and (4) from holding himself out in any way ass an attorney and counselor-at-law.

NEW YORK SUPREME COURT
APPELLATE DIVISION—SECOND DEPARTMENT

691.10 Conduct of disbarred, suspended r resigned attorneys. (a) Compliance with Judiciary Law. Disbarred, suspended or resigned attorneys at law shall comply fully and completely with the letter and spirit of sections 478, 479, 484 and 486 of the Judiciary Law relating to practicing as attorneys at law without being admitted and registered, and soliciting of business on behalf of an attorney at law and the practice of law by an attorney who has been disbarred, suspended or convicted of a felony.

(b) Compensation: A disbarred, suspended or resigned attorney may not share in any fee for legal services performed by another attorney during the period of his removal from the bar. A disbarred, suspended or resigned attorney may be compensated on a quantum meruit basis for legal services rendered and disbursements incurred by him prior to the effective date of the disbarment or suspension or of his resignation. The amount and manner of payment of such compensation and recoverable disbursements shall be fixed by the court on the application of either the disbarred, suspended or resigned attorney or the new attorney on notice ot the other as well as on notice to the client. Such applications shall be made at special term in the court wherein the action is pending or at special term in the Supreme Court in the county wherein the moving attorney maintains his office if an action has not been commenced. In no event shall the combined legal fees exceed the amount the client would have been required to pay had no substitution of attorneys been requred.

(c) Notice to clients not involved in litigation. A disbarred, suspended or resigned attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters,

othe than litigated or administrative matters or proceedings pending in any court or agency, of his disbarment, suspension or resignation and his consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation and shall advise said clients to seek legal advice elsewhere.

(d) Notice to clients involved in litigation. (1) A disbarred, suspended or resigned attorney shall promptly notify by registered or certified mail, return receipt requested, each of his clients who is invlved in litigated matters or administrative proceedings, and the attorney or attorneys for each adverse party in such matter o proceeding, of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation. The notice to be given to the client shall adise of the prompt substitution of another attorney or attorneys in his place.

(2) In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or resignation, it shall be the responsibiity of the disbarred, suspended or resigned attorney to move *pro se* in the court in which the action is pending, or before the body in which an administrative proceeding is pending, for leave to withdraw from the action or proceeding.

(3) The notice given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred, suspended or resigned attorney. In addition, notice shall be given in like manner to the Office of Court Administration of the State of New York in each case in which a retainer statement has been filed.

(e) Conduct after entry of order. The disbarred, suspended or resigned attorney, after entry of the disbarment of suspension order or after entry of the order accep-

ting the resignation, shall not accept any new retainer or engage in any new case or legal matter of any nature as attorney for another. However, during the period between the entry date of the order and its effective date he may wind up an complete, on behalf.

(f) Filing proof of compliance and attorney's address. Within 10 days after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred, suspended or resigned attorney shall file with the Clerk of the Appellate Division for the Second Judicial Department an affidavit showing:

(1) that he has fully complied with the provisions of the order and with these rules; and

(2) that he has served a copy of such affidavit upon the petitioner of moving party. Such affidavit shall also set forth the residence or other address of the disbarred, suspended or resigned attorney where communications may be directed to him.

(g) Appointment of attorney to protect clients' interests and interests of disbarred, suspended or resigned attorney. Whenever it shall be brought to the court's attention that a disbarred, suspended or resigned attorney shall have failed or may fail to comply with the provisions of subdivisions (c), (d) or (f) of this section, this court, upon such notice to such attorney as this court may direct, may apoint an attorney or attorneys to inventory the files of the disbarred, suspended or resigned attorney and to take such action as seems indicated to protect the interests of his clients and for the protection of the interests of the disbarred, suspended or resigned attorney.

(h) Disclosure of information. Any attorney so appointed by this court shall not be permitted to disclose any information contained in any file so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of this court which ap-

pointed the attorney to make such inventory.

(i) Fixation of compensation. This court may fix the compensation to be paid to any attorney apointed by it under this section. The compensation may be directed by this c ourt to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged in accordance with law.

(j) Required records. A disbarred, suspended or resigned attorney shall keep and maintain records of the various steps taken by him under this Part so that, upon any subsequent proceeding instituted by or against him, proof of compliance with this Part and with the disbarment or suspension order or with the order accepting the resignation will be available.

(k) Abandonment of practice by attorney. When, in the opinion of this court, an attorney has abandoned his practice, this court, upon such notice to such attorney as it may direct, may appoint the chief counsel fo the appropriate joint bar association grievance committee, or an individual attorney, to take custody and inventory the files of such attorney and to take such action as seems indicated to protect the interests of his clients.

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the third day of April A.D. 1992

PRESENT, HON SOL WACHTLER, *Chief Judge, presiding.*

Mo. No. 348 SSD 27
In the Matter of Paul A. Weiss,
an attorney and counsel at law.
Grievance Committee for the Tenth
Judicial District,

Respondent,

Paul A. Weiss,

Appellant.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved. Judges Simons and Alexander took no part.

Donald M. Sheraw
Clerk of the Court

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eleventh day of June A.D. 1992

PRESENT, HON. SOL WACHTLER, *Chief Judge, presiding.*

2-24 Mo. No. 584
In the Matter of Paul A. Weiss,
an attorney and counselor at law.
Grievance Committee for the Tenth
Judicial Districe,

Respondent,

Paul A. Weiss,

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Donald M. Sheraw
Clerk of the Court

State of New York
Court of Appeals

DECISION June 11, 1992

2-24 Mo. No. 584
In the Matter of Paul A. Weiss,
an attorney and counselor at law.
Grievance Committee for the Tenth
Judicial District,

Respondent,

Paul A. Weiss,

Appellant.

Motion for leave to appeal denied.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

In the Matter of PAUL A. WEISS, an Attorney and Counselor at Law, Grievance Committee for the Tenth Judicial District,

Petitioner,

PAUL A. WEISS,

Respondent.

APPELLANT'S JURISDICTIONAL STATEMENT

INDEX NO. 90-01206

1) The Title of the Case is:

In the Matter of PAUL A. WEISS, an attorney and counselor at law. Grievance Committee for the Tenth Judicial District, Petitioner, PAUL A. WEISS, Respondent.

2) The appeal is taken from the Order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department.

3) The Respondent-Appellant's Notice of Appeal was duly served on the 6th day of January, 1992.

4) This appeal arises out of the Order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, dated November 25, 1991. Said order was served on Respondent-Appellant on the 9th day of December, 1991. The notice of Entry is dated December 5, 1991.

5. The name and address of the attorney for Respondent is:

FRANK A. FINNERTY, JR., CHIEF COUNSEL
Grievance Committee for the Tenth Judicial District
900 Ellision Avenue - Suite 304
Westbury, NY 11590

GRACE D. MORAN, OF COUNSEL

6. The Court of Appeals has jurisdication to hear the within appeal as Respondent-Appellant's constitutional rights were violated by the Grievance Committee and the Supreme Court of the State of New York, Appellate Division, Second Department, as set forth below.

A. THE PROCEDURES EMPLOYED BY THE GRIEVANCE COMMITTE, WHICH PROCEDURES WERE ACQUIESCED IN BY THE COURT BELOW, VIOLATE ESSENTIAL NOTIONS OF PROCEDURAL DUE PROCESS AND REQUIRE THAT THE ORDER OF DISBARMENT BE REVERSED.

1. A Law License is a property right (O'Brien v. O'Brien, 114 Misc. 2d 233, 452 N.Y.S. 2d 801), which property rioght entitles the holder to receive proper notice and hearing before said property is seized. Respondent-Appellant's property was seized by judicial procedures which violate essential notions of Due Process.

a) The Respondent-Appellant received no notice, whatsoever, either during the evidentiary hearing to determine the veracity of the charges, nor in Petitioner-Respondent's Motion to Confirm that alleged prior acts of misconduct, which acts met with private letters of censure, would be cited by the court as being significant acts of professional misconduct. Thus Resondent-Appelant was deprived of an opportunity to challenge, rebut or offer evidence in his behalf regarding said alleged acts before the court made its determination.

b) Respondent-Appellant's Procedural Due Process rights were violated by the Court's failure to hold a hearing with reference to Petitioner-Respondent's Motion to Confirm. Respondent-Appellant was deprived of an opportunity to challenge the court's treatment of said alleged prior acts, or to offer additional evidence in his behalf regarding the same.

2. The Decision and Order of Disbarment was both arbitrary and unreasonable, therby violating Petitioner-Appellant's due process rights. ALthough the Referee's Findings of Facts set forth a multitude of grounds constituting mitigating circumstances under Judiciary Law section 90 (2) and derivative case law, the court below failed even to mention the same in its Order of Disbarment. Furthermore, its Decision and Order of Disbarment is inconsistent with its acquiescence in and failure to suspend Respondent-Appellant from the practice of law during the pendency of Disciplinary Proceedings. Further inconsistencies arise from its directive that its Decision and Order of Reference, dated December 13, 1990 should not be published. Said Orders usually are published, and the attorney is suspended, both for the protection of the public, especially when it is believed that an attorney may have engaged in conduct warranting disbarment.

B. THE COURT'S ORDER OF DISBARMENT VIOLATES THE EQUAL PROTECTION CLAUSE OF BOTH FEDERAL AND STATE CONSTITUTIONS IN THAT RESPONDENT-APPELLANT IS BEING TREATED DIFFERENTLY UNDER THE LAW THAN SIMILARLY SITUATED ATTORNEYS.

1. The Appellate Division, Second Department, is unduly harsh, as compared to the other three judicial departments, with reference to administering sanctions in cases of attorney misconduct.

2. The Appellate Division, in failing to consider or even acknowledge the existence of mitigating circumstances in its Decision and Order of Disbarment, is applying the law in a non-equal, arbitrary, and unreasonable fashion.

Yours, etc.
ANDREW J. HIRSCHHORN
Attorney for Respondent-Appellant
28 East Old Country Road
Hicksville, New York 11801
(516)484-4128

TO:

FRANK A. FINNERTY, JR., Chief Counsel
Grievance Committee for the Tenth Judicial District
900 Ellison Avenue - Suite 304
Westbury, NY 11590
(516)832-8585

GRACE D. MORAN, OF COUNSEL

CLERK OF COURT, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT
45 Monroe Place, Brooklyn, NY 11201

CLERK OF COURT, COURT OF APPEALS, Eagle Street, Albany, NY

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

In the Matter of PAUL A. WEISS, an attorney and counselor at law.

Grievance Committee for the Tenth Judicial District,

Petitioner,

PAUL A. WEISS,

Respondent.

NOTICE OF APPEAL

Index No. 90-01206

SIRS:

PLEASE TAKE NOTICE that the above named Respondent, PAUL A. WEISS, pursuant to CPLR 5601, hereby appeals to the Court of Appeals from the Opinion and Order entered herein in the office of the Clerk of the Court, Appellate Division, Second Judicial Department, on the 25th day of November, 1991, wherein it disbarred the Respondent from the practice of law, and the Respondent appeals from each and every part of the Order as well as from the whole thereof.

Dated: Hicksville, New York
January 6, 1992

Yours, etc.

ANDREW J. HIRSCHHORN
Attorney for Respondent
28 East Old Country Road
Hicksville, New York 11801
(516)484-4128

TO:

FRNAK A. FINNERTY, JR., Chief Counsel
Grievance Committee for the Tenth Judicial District
900 Ellison Avenue - Suite 304
Westbury, NY 11590

(516)832-8585

GRACE A. MORAN
OF COUNSEL

CLERK OF COURT-APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT
45 Monroe Place, Brooklyn, NY 11201

MOSES M. WEINSTEIN
Referee
123-35A 82nd Road
Kew Gardens, NY 11415
(718)544-3344

CLERK OF COURT, COURT OF APPEALS
EAGLE STREET
ALBANY, NEW YORK 11027-1095

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.
LAWRENCE J. BRACKEN
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
CORNELIUS J. O'BRIEN, JJ.

90-01206

In the Matter of Paul A. Weiss,
an attorney and counselor at law.

DECISION & ORDER

Grievance Committee for the Tenth
Judicial District, petitioner;

Paul A. Weiss, respondent.

Proceeding pursuant to statute (Judiciary Law § 90) to discipline the respondent, Paul A. Weiss, an attorney and counselor-at-law, who was admitted to practice by the Appellate Division of the Supreme Court, Second Judicial Department on June 18, 1958.

Upon the papers filed in support of the application and the answer thereto, it is

ORDERED that the issues raised by the petition and the respondent's answer are referred to Hon. Moses M. Weinstein, a retired Associate Justice of the Appellate Division, Second Judicial Department, c/o Weinstein and Weinstein, 123-35A 82nd Road, Kew Gardens, New York 11415, as Special Referee to hear and to report, together with his findings on the issues.

MANGANO, P.J., BRACKEN, LAWRENCE, KUNZEMAN and O'BRIEN, JJ., concur.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Petitioner,

PAUL A. WEISS,

Respondent.

REPORT OF THE REFEREE TO THE HONORABLE PRESIDING JUSTICE AND JUSTICES OF THE APPELLATE DIVISION, SECOND DEPARTMENT, SUPREME COURT

June 13, 1991

MOSES M. WEINSTEIN
Referee
123-35A 82nd Road
Kew Gardens, New York 11415
(718)544-3344

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

IN THE MATTER OF PAUL A. WEISS,
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Petitioner,

PAUL A. WEISS,

Respondent.

REPORT OF
MOSES M. WEINSTEIN
SPECIAL REFEREE

TO THE JUSTICES OF THE SUPREME COURT,
APPELLATE DIVISION, SECOND DEPARTMENT

INTRODUCTION

By order of the Appellate Division, Second Department, dated May 8, 1987, this proceeding was instituted by the Grievance Committee for the Tenth Judicial District with respect to PAUL A. WEISS, an attorney and counselor at law, admitted to practice by this Court on June 18, 1958. The Petitioner prayed that the Respondent be disciplined for professional misconduct upon the charges therein set forth. The proceeding came before this Court by Notice of Petition dated May 11, 1990, and the Respondent filed an Answer to the Petition on July 3, 1990. By Order date December 13, 1990, the issues raised by the Petition and Answer were referred to me, a retired

Justice of the Supreme Court, Appellate Division, Second Department, to hear and report with my findings upon each of the issues.

Hearings were held by me on April 17, 1991, April 19, 1991 and May 7, 1991, and in due course, post hearing memoranda were submitted by Petitioner and Respondent.

The Petitioner was represented by Grace D. Moran, of the office of Frank A. Finnerty, Jr., Chief Counsel, grievance Committee for the Tenth Judicial District. The Respondent appeared pro se.

The Respondent called no witnesses and introduced no exhibits. The Petitioner called one witness and introduced three exhibits.

CHARGE ONE OF THE PETITION

Respondent converted escrow monies belonging to his client, William N. Mairs, Jr., in the manner hereinafter specified:

1. In or about 1982, respondent was retained by William N. Mairs, Jr., a disbarred attorney to represent him in connection with Mairs' application for reinstatement in the First Judicial Department.

2. Mairs had been disbarred for conversion of funds belonging to the Estate of Jane Farrell.

3. In or about December 1983, Mairs opened an ierest bearing escrow account so that restitution could be made to the heirs of the Farrell Estate.

4. The aforesaid account was oipened at National Westminster Bank, New Hyde Park branch, account # 2-020-61130-5. Respondent was named as the escrowee.

5. Mairs made an initial deposit of $10,300.00 and in June 1985, made a second depositi of $9,200.00.

6. Under the terms of the escrow agreement no withdrawals were to be made until the persons entitled to restitution were identified and located.

7. In September 1985, Mairs learned that respondent had withdrawn $3,050.00 from this account on June 28, 1985 for respondent's own use and benefit.

8. The aforesaid withdrawal was made without the knowledge or consent of Mairs.

9. By engaging in the aforesaid conduct respondent violated DR 9-102 of the C.P.R.

CHARGE TWO OF THE PETITION

Respondent neglected his duties and obligations as the attorney for William N. Mairs, Jr. and engaged in conduct involving fraud, deceit and misrepresentation in the manner hereinafter specified:

1. THere were eight heirs to the Estate of Jane Farrell. Five lived in Ireland and three lived in the United States.

2. Prior to retaining respondent, Mairs had been in contact with Alphonsus Farrell who lived in Ireland and was acting as an intermediary on behalf of the other heirs in Ireland.

3. After retaining respondent, Mairs asked respondent to contact Alphonsus Farrell for the purpose of arranging restitution.

4. Respondent advised Mairs that he had written to Farrell and to the heirs in the United States on three occasions but had received no reply.

5. Respondent advised Mairs not to attempt to contact Farrell again.

6. Thereafter respondent argued in Mairs application for reinstatement that Mairs had done his best to fulfill his obligations but his efforts to resolve the matter were unsuccessful due to a lack of cooperation on the part of the heirs.

7. The aforementioned argument was unsuccessful.

8. Mairs thereafter learned that the letters which

respondent claimed to have sent to the heirs were never received by them.

9. Mairs retained new counsel who wrote to the heirs and an immediate response was received from them accepting the settlement proposals.

10. By engaging in the aforesaid conduct respondent violated DR 1-102 (A)(5) and DR 7-101(A)(2).

CHARGE THREE OF THE PETITION

Respondent has failed to maintain escrow monies in an escrow account and had converted escrow funds belonging to his client Edward A. Semidei in the manner hereinafter specifies:

1. Respondent represented Edward A. Semidei in an action for divorce.

2. On May 13, 1985, pursuant to an agreement in the aforesaid action, Elsie Semidei issued two certified checks in the amounts of $5,000.00 and $1,000.00. Each check was payable to Edward A. Semidei and Paul Weiss, Esq.

3. On May 16, 1985, respondent deposited both checks into account # 171-0641750 maintained at Manufacturers Hanover Trust Co. in the name of Paul A. Weiss, attorney-at-law.

4. On May 31, 1985, and continuing through June 20, 1985, the balance in the aforementioned account was less Edward Semidei's interest in it.

5. On June 7, 1985, respondent issued a check to Edward Semidei in the amount of $2,950.00 drawn on the aforementioned account.

6. The aforesaid check was returned for insufficient funds.

7. On or about June 28, 1985, Edweard Semidei appeared at respondent's office and demanded payment.

8. On June 28, 1985, respondent went to National Westminster Bank where he maintained account #

2-020-61130-5 designated Paul Weiss Escrow and withdrew $2,950.00 in a cashier's check payasble to Edward Semidei and $100.00 is cash which respondent kept.

9. The aforesaid withdrawal was made against funds held in escrow for another client of respondent's, William N. Mairs, Jr.

10. By engaging in the aforementioned conduct respondent has violated DR 9-102(A)(B) and DR 1-102(4)(6) of the C.P.R.

CHARGE FOUR OF THE PETITION

Respondent has failed to maintain a proper escrow account and has engaged in conduct adversely reflecting on his fitness to practice law in the manner hereinafter specified:

1. On or about March 14, 1977, Blanche Zam, now Blanche Darling entered into a contract to purchase a house.

2. Ms. Zam (Darling) was represented by Myron Kanter, Esq. and the sellers, Kavros, by Bernard Fremont of Fremont & Weiss.

3. Ms. Zam (Darling) turned over $2,350.00 in escrow to Fremont as a downpayment.

4. No closing took place and litigation was commenced for the return of the escrow, Zam v. Kavros, Fremont & Weiss.

5. On or about January 30, 1981, respondent signed a stipulation concluding the aforementioned litigation. The stipulation provided that clear title was to be conveyed to Zam (Darling) on the property by March 30, 1981 or the downpayment was to be returned to her. If neither term was met Zam (Darling) had the right to enter judgment against all named defendants.

6. Judgment was entered against the defendants on April 13, 1981 for the sum of $3,027.25 (deposit plus interest and costs).

7. The law firm of Fremont and Weiss dissolved in or about 1981.

8. Attempts by Myron Kanter to collect the judgment were unsuccessful.

9. In or about January 1983, respondent paid $1,100.00 to Kantor on the judgment.

10. Respondent acknowledged that no escrow funds remained in the Fremont and Weiss Account.

11. In April 1985, respondent had a telephone conversation with Blanche Zam (Darling) in which he promised to pay the balance remaining on the judgment in May 1985. Respondent has not done so.

12. By engaging in the aforesaid conduct respondent has violated DR 9-102 (B)(4) and DR 1-102(A)(6) of the C.P.R.

FIFTH The respondent, Paul A. Weiss, knew or should have know in committing the above described acts he was guilty of professional misconduct within the meaning of Section 691.2 of the Rules Governing the Conduct of Attorneys, Appellate Division, Second Department.

CHARGE ONE, TWO AND THREE

The Respondent has conceded the charges herein stated as evidenced by the following excerpts from the minutes of the various hearings, which I have set forth herein.

His claim is that this situation was an aberration on his part and that it has occured prior nor subsequently to this matter.

In his response to the Petition of the Grievance Committee, the Respondent, pro se, admitted the allegations of Charges 1 and 2, except that he denied paragraphs 5, 7, 8, 9 and 10 in Charge 2. (See page 4 and 5 of the minutes of April 17, 1991).

"MRS. MORAN: But also, your Honor, with

respect to Mairs, Mr. Weiss has denied 7,8 and 9; paragraphs designated 7, 8 and 9 of Charge 2. I don't know that that is critical to this charge.

THE HEARING OFFICER: 7, 8 and 9 are denied.

MRS. MORAN: Yes.

THE HEARING OFFICER: What about the rest of it?

MRS. MORAN: The rest of it is admitted, your Honor, with the exception of Paragraph 5.

In other words, under Charge 2, Mr. Weiss has denied Subparagraphs 5, 7, 8 and 9.

THE HEARING OFFICER: 5 --

MRS. MORAN: 7, 8 and 9.

THE HEARING OFFICER: And he would, of course, not admit 10.

MRS. MORAN: No.

THE HEARING OFFICER: Because 10 says that he violated -- that's under 2 not or 1?

MRS. MORAN: Under 1, I have "all admitted."

THE HEARING OFFICER: Admitted; is that correct, sir?

THE WITNESS: Yes, sir.

THE HEARING OFFICER: Now, let's get to 3.

MRS. MORAN: 3, I have all admitted."

See page 74 of the minutes of April 19, 1991, in which the Respondent admits taking the $3,200.00 as set forth in Charge 3.

"There is no question, I admit taking the $3,200.00 dollars. Myself.

I had fallen below the monies given to me by Edward Semedei, simply because I had to make payment of another check from that account to another client who wanted the money immediately, and the check had not cleared.

I had intended to, and I did replace the money to Mr.

Semedei's account at approximately the same time I replaced Mr. Mair's money. Replaced it in full. Nobody lost any money by my defalcation.

I'm not proud of it. Had I possession of my senses, full possession, I might have been able to resist the other client. I cannot say yes or no."

CHARGE FOUR

The Respondent now denied any knowledge or information sufficient to form a belief as to the allegation in Charge 4, and states that the monies given to Zam (Darling) were not deposited in the escrow of Fremont and Weiss, as partners, and that after the hospitalization of Bernard Fremont, Esq. and upon his examination of the Escrow books and account in the name of Fremont and Weiss, he learned that there were *no escrow funds remaining and Respondent further states that he took no escrow funds from said account.*

Then he stated further in his testimony of April 19, 1991, that he had not paid the Darling's the judgment of approximately $2,000.00 in nine or ten years because he had assumed that his partner, Mr. Fremont, had paid it pursuant to his agreement. (See page 83 of the said minutes of April 19, 1991).

The Respondent further concedes that he was aware of the fact that a judgment was outstanding and that the Darling's were complaining about it and that he did not make any arrangement to pay that judgment since 1985. (See minutes of April 19, 1991, Page 84). The Respondent further stated that he was unable to pay any judgment because all of his funds are tied up in equitable distribution and that he made an effort to communicate with Mr. Fremont, his former law partner, several times and that the judgment remains on record against him.

CONCLUSION

There is no question that the charges enumerated herein have been adequately proven. *The Court's attention is respectfully directed to the statement of the Respondent that this situation was an aberration.*

The Respondent further testified that he was admitted in 1958 and is currently 60 years of age; that he is participating actively as a member of the pro bono panels of Nassau County and Suffolk County and is a lecturer for the Academy of Law of both counties. He stated further that in 1984, he was diagnosed as having severe hypertension and was hospitalized at St. John's Episcopal Hospital and was diagnosed as having duodenal ulcers and emotional stress reaction.

(See minutes of April 19, 1991, pages 72-74).

"At the time I was having problems. My mother, who was a diabetic, eighty-two years of age, was put into the hospital with gangrene. Six weeks later, we persuaded her to have the knee and toe operated on. It was too late. She passed on about three weeks after.

I was also having trouble with my wife. I might add for the record, as of this past Monday, April 22, an interim judgment of divorce was granted, and with the equitable distribution aspect still open.

I was unable to handle the stress. I was on Vasotec (sic), ten milligrams, three times a day. That is a hypertensive, or anti-hypertensive.

I took Dyazide, ten milligrams a day. That's a diuretic.

At the same time I was taking Prednisone, twenty milligrams, twice a day. Prednisone is an anti-inflammatory.

The combination of those drugs causes me at times to be dizzy, nauseous.

And to put it very bluntly, sometimes go off the wall.

At the time, I was having pressures with Mr. Mairs, who is not the easiest client. *Most lawyers are not easy clients; myself included.*

I was having problems with my mother, my sister, my wife.

My son was graduating Stony Brook University at the time, with a double baccalaureate, which I'm very proud of; cum laude; both of them. I just couldn't handle myself."

The Respondent submitted an affidavit of Marion Altman, Esq., an attorney-at-law, and said affidavit is herewith annexed and made part of the report.

The Court's attention is also directed to the Matter of George LaCava, an Attorney, Respondent, vs. New York State Bar Association, Petitioner, Supreme Court, APpellate Division, Fourth Department.

It was recently stated in Matter of Iversen, 51 A.D. 2d 422, 381 N.Y. S2d 711, decided April 9, 1976:

"An attorney holds money that he collects for a client as a trustee and he is obligated to keep it separate from his own and pay it over to the client on demand. If he fails to do so and uses the client's money for any purpose of his own, he violated his professional duty and should be disciplined (Matter of Braun, 11 A.D.2d 147, 204 N.Y.S. 2d 194; Matter of Babcock, 230 App. Div. 323, 325, 243, N.Y.S. 489). It is no defense that the attorney intended to and did, in fact, reimburse the client (Matter of Detsky, 16 A.D. 2d 595, 229 N.Y.S. 2d 869; Matter of Coleman, 178 App. Div. 580, 583, 165 N.Y.S. 685). The conversion is complete when the account in which the client's funds are deposited is overdrawn or when the balance of the account is less than the client's interest in it, and the conduct of the attorney is not excused because the improper handling of the funds is due to mismanagement rather than misconduct (Matter of LePore, 39 A.D. 2d 261, 334 N.Y.S. 2d

102; Matter of Raines, 38 A.D. 2d 459, 330 N.Y.S. 2d 669).

Dated: Kew Gardens, New York

June 13, 1991

Respectfully submitted,

MOSES M. WEINSTEIN
REFEREE

May 21, 1991

Grievance Committee
900 Ellison Avenue
Westbury, New York 11590

Attention: Grace Moran, Esq.

Re: Paul Weiss, Esq.

Dear Ms. Moran:

It has come to my attention that Paul Weiss may be in need of a letter which could shed some light on an aspect of his character. If I may, I would like to share the following with you.

I graduated from Hofstra Law School in May of 1981, thirty years after graduating from college. It was the fulfillment of a lifetime dream. The only reason I ever got to take the LSAT was because my son, then a first year student at NYU Law School sent me the application and told me to fill it out and send it in. After his spending a few months in law school, my son decided I would love it. Actually, I hated it--but I did become a lawyer.

After working for two different law firms, I decided, after much encouragement from those who loved me, to open my own practice. It was 1983, I was past fifty; I had no political or business connections to help me build a client base, but I did meet some wonderful people in the Nassau County Bar Assocation.

One, Alex Froman encouraged me to come to lunch at the

center table at the Bar where I would meet, sit next to, listen to and talk to other lawyers and judges. I went and love it. It was a place to learn, to grow up, to feel proud and be happy about where I was. I had been divorced in 1973 and I was receiving alimony, thank God. I sure wasn't making it as a financially successful lawyer.

Someone told me about being a Volunteer Lawyer in matrimonials. It was before the organized Volunteer Lawyers Project. Tom Maligna was in charge and he won the New York State Young Lawyers Award that year because of the work he did with the program.

I volunteered for as many cases as they would send me. I think the fee was about $25.00 an hour--if the client could afford it. Otherwise--no fee. I didn't mind. I actually loved it. I figured I could never get so much experience so quickly any other way, and my clients were getting the benefit of a mature, intelligent, compassionate, "young" lawyer.

I had been very idealistic for the first fifty years of my life and though practicing law is probably the fastest way to destroy such idealism, I managed to survive the hammering blows to my integrity, my principles, my very being that I encountered in those days.

And Paul Weiss was one of the reasons I survived.

One of my volunteer cases was "T" v. "T", a matrimonial. He was the plaintiff; she was my client. It was an unusual set of facts. She was around 60, he around 70, and they were divorcing. They were both Holocaust survivors. Money reared its ugly head and the battle got bloody.

She discharged two prior lawyers because she felt she could no longer afford legal fees. The Honorable James Brucia did not want to proceed without Mrs. T being represented and he requested aid for her. I was asked to represent her pursuant to the Volunteers Lawyers Program on a no-FEE basis. The major issue between the parties was a home worth well over $125,000. There was an additional equal amount in liquid assets. My memory is slightly frail on the details, but as best as I can recall, a lot of paper work was required. A cross motion with an affidavit that ran at least thirty pages was submitted on behalf of my client. Our cross motion was denied and unless settled, we would have to go to trial. The prior attorney had waived discovery and it was denied to me in the motion. But we anticipated completing discovery with the plaintiff on the stand.

My client suffered from a heart condition and kept threatening to have a heart attack if forced to take the stand, but she insisted on fighting this latest legal maneuver by her husband.

I had never conducted an equitable distribution trial, (not had many people in 1983). It was a new concept and a lot of law has passed since then on the subject. In reviewing the file, the history of the parties, their community involvement, I became more and more agitated. I felt too inexperienced in the practice of law to proceed to trial and I definitely felt too inexperienced in the practice of meanness and dishonesty to deal with my adversary. Meanwhile, I went to lunch every day at the center table and kept asking questions--asking for opinions on this and that and looking for some direction as to how to proceed.

One man decided to become my mentor. He is an "injustice collector", a Don Quixote who likes to brandish his

sword and fight the wrongs, even after twenty plus years of practicing law. Frequently, the harsh comments and hostile joking is misunderstood as being the real Paul Weiss. Actually, the real Paul Weiss is a kind, caring man who is deeply touched by inequities, unfairness, indifference and some rotten lawyers. Paul Weiss cares for people.

He offered to help me almost immediately. He carefully reviewed the motion I submitted and kept telling me, at lunch, over the following months that if I ever had to go to trial, he would second chair me.

Well, it happened! We were ordered to trial. I called Paul Weiss on a Friday and told him I had to start the trial Monday morning and outlined all the things that I thought had to be done that were not done and asked for guidance. I needed money for subpoenas and I needed time.

He said "Don't worry, I'll be there Monday morning!" And he was--and he took first chair. After one week of trial, it was adjourned for several weeks giving me time and oppoortunity for discovery. By that time, I had learned more about law and lawyering then I had in the last two years of law school. Paul's oral motion for expense money was granted and I was able to proceed. Paul also applied for legal fees for me and I was granted $500.00.

When it was ti to return to court, Paul was actually engaged in Queens and I appeared asking for an adjournment on our behalf. I reminded the court of the circumstances--of Paul agreeing to try the case and of my inexperience. The court decided I was experienced enough to continue and denied my application. After four weeks or so of adjournments, testimony, etc., it was over. The court issued a fourteen-page decision and essentially, my client won (more than Paul ever though possible). The court men-

tioned that I had submitted a request for attorney fees which were modest indeed at $75.00 an hour. He could have awarded me about $12,000 and even though the parties had sufficient assets to pay me, that had not been the agreement and I was therefore denied any fee at all.

At least three months of my time plus weeks of Paul Weiss's time had been expended for free. Paul was very pleased and surprised at the entire decision and felt I must had done a very good job. If I did, it was because of the months of Paul talking to me about the case and helping me, inspiring and calling me. I was gratful for his compliments.

Eventually, I had to engage in post judgment enforcement, engage a Florida attorney to proceed on my clients behalf, and ultimately earned a small amount of money for which I was grateful. Paul Weiss received only my thank you. It was a nice thank you and I had intended to enclose a copy for your review, however I am in the hospital at this time and do not have it at hand.

Today, seven years later almost to the day, Paul Weiss is suffering over something regarding the practice of law and I am forced by illness, to give up my office. I hope to continue the practice law on a limited basis as long as God grants me the time to live; but under any circumstances, there is little enough time left.

When I review my short experience as a lawyer, I think of all the real crumbs in this world, it saddens me to think that Paul Weiss has to defend himself because he happens to be a decent guy with a heart. I can relate to that. it seems it's always that way, lately.

Sincerely,

MARION ALTMAN
MA: jo d/31
cc: Paul Weiss, Esq.